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Official Report of Debates (Hansard)

Wednesday 23 November 2005

Journal des débats (Hansard)

Mercredi 23 novembre 2005

Standing committee on justice policy

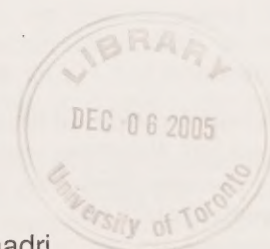
Ending Mandatory Retirement
Statute Law
Amendment Act, 2005

Comité permanent de la justice

Loi de 2005 modifiant
des lois pour éliminer
la retraite obligatoire

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
Greffier : Katch Koch



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 23 November 2005

Mercredi 23 novembre 2005

The committee met at 1006 in room 228.

ORGANIZATION

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I'd like to call this meeting of the standing committee on justice policy to order. Good morning to everyone. There was, as you know, an informal meeting recently of the subcommittee, and I understand there's some business pertaining to that. Do I have any motions from the floor?

Ms. Jennifer F. Mossop (Stoney Creek): I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on the business of the committee;

That the presence of all members of the subcommittee is necessary to constitute a meeting;

That the subcommittee be composed of the following members: Mr. Qaadri as Chair, Mr. Flynn, Mr. Klees, and Mr. Kormos; and

That substitution be permitted on subcommittee.

The Chair: Thank you. Ms. Mossop has moved that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair or at the request of any member thereof—

Mr. Gilles Bisson (Timmins–James Bay): Dispense.

The Chair: Thank you.

Is there any discussion on the motion? Seeing none, all those in favour? Those opposed? I declare the motion carried.

Are there any other motions from the floor?

Mr. Kevin Daniel Flynn (Oakville): I move that the standing committee on justice policy proceed as follows with respect to Bill 211, An Act to Amend the Human Rights Code and certain other Acts to end mandatory retirement:

That the committee meet for the purpose of holding public hearings in Toronto on Wednesday, November 23, 2005, and if necessary, on Thursday, November 24, 2005;

That the clerk of the committee, in consultation with the Chair, be authorized to post notice of the hearings on the Ontario Parliamentary Channel and on the Internet prior to the adoption of this motion;

That the clerk of the committee, in consultation with the Chair, be authorized to schedule all interested presenters on a first-come, first-served basis;

That the length of presentations for witnesses be 15 minutes for groups and 10 minutes for individuals;

That clause-by-clause consideration of the bill be scheduled for Thursday, November 24, 2005, upon completion of public hearings;

That the clerk of the committee, in consultation with the Chair, be authorized to commence making any preliminary arrangements to facilitate the committee's proceedings prior to the adoption of this motion.

The Chair: Thank you. Mr. Flynn has moved that the standing committee on justice policy proceed as follows—

Mr. Bisson: Dispense.

The Chair: Thank you. Is there any discussion on the motion?

Mr. Bisson: Just first of all, has there been any discussion with Mr. Kormos on this matter?

Mr. Flynn: Mr. Kormos was at the meeting.

Mr. Bisson: He was at the meeting.

Is that in the morning or the afternoon of next week that that's happening?

Mr. Flynn: It's tomorrow, November 24.

Mr. Bisson: Oh, that's right.

Mr. Flynn: And it's in the morning.

Mr. Bisson: Fine; that's good.

The Chair: Any further discussion on this motion? All those in favour? Any opposed?

I declare the motion carried.

ENDING MANDATORY RETIREMENT
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
POUR ÉLIMINER LA RETRAITE
OBLIGATOIRE

Consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement / Projet de loi 211, Loi modifiant le Code des droits de la personne et d'autres lois pour éliminer la retraite obligatoire.

The Chair: We'll now proceed with the consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement. We will begin with the invitation of our first presenters. I'd remind all our presenters that they have approximately 15 minutes in which to make their remarks, and any time

remaining will be divided equally among the various parties for questions.

CHOICES IN RETIREMENT

The Chair: May I respectfully call to the front Professors David MacGregor and Thomas Klassen of King's University and York University.

Gentleman, if you might identify yourselves for the purposes of recording for Hansard, you have 15 minutes, starting now.

Mr. Tom Klassen: I'm Tom Klassen.

Mr. David MacGregor: I'm David MacGregor.

We are honoured to present our submission regarding Bill 211 to the standing committee on justice, and we wish to thank the committee for its kind invitation.

We congratulate the government of Dalton McGuinty and Ministers Steve Peters and Chris Bentley for this historic bill, which, if passed, extends human rights protection to workers age 65 and over and effectively eliminates mandatory retirement in the province of Ontario. The bill represents a significant step forward for the rights of older people and their families in this province. We thank in particular Kevin Flynn, parliamentary assistant to the Minister of Labour.

We wish to acknowledge the critical role played by Keith Norton and the Ontario Human Rights Commission, whose report in 2001 prepared the ground for Bill 211. The report showed unequivocally how the archaic practice of mandatory retirement, made possible by the limitations of the Ontario Human Rights Code, undermines the fundamental human rights, dignity and self-worth of older workers. Liberal MPP Mike Colle's private member's bill, twice introduced in the Legislature, rekindled the hopes of elders in Ontario to finally be accepted as equals in the workplace and civil society.

The government held consultations in 2004 prior to introducing Bill 211 in a successful effort to get the bill substantially right. We recognize the bill is not perfect. We regret the one-year delay in its application; we are also disappointed that it does not shelter employee health and dental benefits after 65. However, we are pleased the bill protects government of Ontario drug benefits and hospital care for those 65 and over, regardless of whether they remain employed.

As co-editors, along with Professor Terry Gillin at Ryerson University, we are contributors to *Time's Up! Mandatory Retirement in Canada*, which I happen to have here. It was published by Lorimer in 2005. We are impressed by the familiarity and sensitivity demonstrated by members of the Legislature with the issues surrounding the human rights of older workers and the practice of forced retirement at an arbitrary age. In our presentation, we will refer to eloquent statements made by members in the debate on second reading.

Bill 211 is not just for older persons of Ontario and their families. Labour Minister Steve Peters declared that this legislation is about choice for all workers in Ontario.

Bill 211 plants a tree that will shelter each person as they reach and surpass the age of 65.

There is no reason to believe that Bill 211 will damage pension rights or restrict the supply of jobs for the young. Manitoba and Quebec banished mandatory retirement almost 25 years ago without reducing employment prospects for younger people or harming pension plans. Indeed, far from cutting back on public pensions, Quebec dropped the pensionable age to 60, offering a model later copied by the Canada pension plan. Quebec is considering a proposal to allow workers to collect QPP at age 60 while continuing in their jobs.

Since the 1960s, the average retirement age in Canada has fallen from 66 to about 62. For most Canadian male workers, and 30% of female workers, retirement is involuntary—triggered by layoffs from work. MPP John Wilkinson argued during second reading that some employers believe they save money by dumping higher-paid, experienced workers. They ignore, he said, the terrible cost in human capital and collective experience. Every year thousands of workers in Ontario, and many more across Canada, are exiled from their jobs at age 65.

Ontario must adapt to a rapidly aging workforce. MPP Phil McNeely noted that employers ought to provide incentives for older workers, as recommended by the OECD and other authorities. A growing number of progressive employers welcome the end of mandatory retirement.

Compulsory retirement hardly exists in smaller businesses and is unknown among the self-employed. In the debate on second reading, MPP Maria Van Bommel noted that in agricultural communities many farmers do not wish to quit at 65; they enjoy their jobs and their time on the land. Equally, more than 20% of physicians and 26% of specialists in Ontario are over 65.

As some members of the Legislative Assembly observed, collective agreements that include mandatory retirement view older workers as second-class citizens for no reason other than chronological age. Veteran workers are banished not only by employer rules, but also in the eyes of their fellow employees. Forced exit means the retiree may never get another job under similar conditions in his or her own field ever again. The exiled employee is fortunate to find any kind of work, even at bottom-level wages.

Mandatory retirement falls very hard on groups we, as a society, should be doing more to protect, particularly women and recent immigrants to Canada. Members of these groups are likely to experience either a late start to employment or interrupted careers because of illness or family responsibilities. MPP Kathleen Wynne observed that women are particularly disadvantaged by forced retirement. For example, female teachers and professors are more likely to have inadequate or substantially lower pensions because of delayed or interrupted career paths. MPP Tony Wong mentioned the unfair punishment mandatory retirement imposes on immigrants, who find themselves at a disadvantage because of late entry to the workforce.

Involuntary retirement causes great economic and social hardship for many, a diminished and marginalized period of life, where socially isolated individuals are reduced to unhappy dependency. As MPP Bill Wilson mentioned, many Canadians have no company pension plan. Magnificent vistas of a leisured retirement float out of reach of most Canadians.

Some argue that compulsory retirement is a necessity for unskilled workers and others in arduous jobs. Speaking poignantly of his own father, MPP Jim Brownell revealed that manual workers love their work as much as anyone else. Instead of exiling older employees who may wish to continue to work, unions and employers should design affirmative action programs, including training and retraining, for veteran workers. Leisure should not be something that only comes at the end of work, but should be integrated throughout the worker's career.

Notwithstanding that some workers wish to work past 65, we recognize that the majority of workers will want to retire as soon as possible. The bill does not in any way impede this. Indeed, the bill will provide employers and unions with opportunities to design more flexible arrangements, which will benefit both workers wishing early retirement and those wanting to continue to work.

Abolishing mandatory retirement isn't about forcing workers to stay longer. It is about recognizing the basic citizenship rights of a growing minority in our society over the age of 65. It is about treating older workers the same as everyone else. Bill 211 is a magnificent contribution to restoring the link between older people and democratic civil society.

The name of the bill and much of the debate around it have highlighted one of the effects of the legislation; namely, the elimination of mandatory retirement. However, the bill is about an even more important issue: extending fundamental human rights under the Ontario Human Rights Code to a group that has until now been excluded from human rights protection.

We urge the members of this committee to return the bill to the House as soon as possible so that third reading and royal assent may occur before the new year. We hope, given the bill's role in extending fundamental human rights, it may receive unanimous support from the Legislature.

The Chair: Thank you, Professor MacGregor. Are there further remarks from Professor Klassen? Fine. We have about seven minutes to distribute evenly and we'll begin with the Tory caucus.

Mr. John O'Toole (Durham): Thank you very much for your presentation. It's a repeated message that I believe we're receiving. I'd also like to be on the record as saying that John Tory and the opposition are in support of this legislation, as well as the work that had been done by our government and previous governments on this issue; more importantly, Bill 68, as you mentioned in your presentation, from Minister DeFaria at that time.

In my case, I'm quite familiar with the issue, having worked, when I was assistant to the Minister of Finance,

on the pension surplus report. The reason I mention the pension surplus report in the overall context of early retirement and the lagging performance of many pension plans, as mentioned in this morning's article on pension fund shortfalls, is, is this a huge issue, of pensions not being as robust perhaps or there at all in many cases? It must be considered in the context of the security of persons who are living longer. That's one of the issues here, that people are living longer and perhaps want to work longer, and I may be included in that group.

1020

There's a bill before the House as well that you should be aware of, Bill 206, which is the OMERS pension fund bill. It's a huge issue. Most of the pensions in Ontario—not just General Motors, but Ford, Chrysler, Stelco, Air Canada, Bombardier, all the legacy company pensions—as you probably know, as academics, are in huge trouble. In that context, we're supportive that the option should be at the individual level and, in that case, it is a discriminatory item, so we would be supporting it.

If there are any questions or a response that you want to make to the issue of the pensions or the issue that we're technically discussing, the mandatory retirement age, I'd be happy to hear your comments.

Mr. Klassen: Just one comment, and it is related to pensions. It is very difficult for individuals to plan 20, 30 or 40 years into the future. What the bill is going to do is provide that flexibility for individuals.

Mr. O'Toole: I just want to comment, too. When I was doing the pension surplusing—

The Chair: Mr. O'Toole, if might. Mr. Bisson?

Mr. Bisson: Just as a follow-up to that, one of the things we're not dealing with in the context of all of this, and I'd like to hear your thoughts on it, is that we all know it's becoming more difficult to retire, with what's happening in the market as far as investments, for most of us who don't have pensions, who have RSPs or nothing at all. Here we are introducing a bill that's going to make it possible for people to work longer. I guess if you follow the argument, it says that if you can't afford to retire, at least you'll be able to keep on working to afford to live. Shouldn't we have an emphasis on trying to do something around the whole Ontario pensions act to say, how are we able to challenge ourselves in order to develop pension legislation that creates the opportunity for people to retire earlier?

For example, your thoughts on the whole issue of surpluses: When there's a surplus, an employer doesn't have to make contributions, which means to say that you can't build a better pension plan. The insurance on pension plans is only up to \$1,000 worth of benefits. There is no portability, and that's a huge issue in today's economy. Do you think we should be doing something on the other side if we're going to be opening up the floodgates on the over-65 issue?

Mr. Klassen: The fact that there's an aging population in Ontario is going to mean that we will have to look at other parts of work and retirement, yes.

Mr. Bisson: My specific question is, if you're going to do the elimination of age 65 as the mandatory retirement age, shouldn't we at the same time have an overall package? If you're going to give people the choice, as we say, in those places where they're now limited to work until age 65, shouldn't we have legislation that basically says, "Here's how we can create better pensions so that it's much easier for people to make a choice to retire before age 65"? I guess that's my question. Shouldn't we be doing both at the same time?

Mr. Klassen: I think it's important for individuals to have choice. Yes, do both.

The Chair: Are there any questions from the government side?

Mr. Flynn: I just wanted to express my appreciation for the input and advice that you've been able to provide us throughout this process. I know that your preference would probably be for more immediate implementation of the bill, but you're probably aware that some people were asking for it to even be retroactive, I believe, and others were asking for it to be stalled for as long as seven years. Do you think that, under the circumstances, perhaps the one year—I know you'd prefer it be shorter, but do you think one year is a reasonable amount of time, given the public input we've received?

Mr. Klassen: Yes, I think one year is reasonable. Clearly, we're concerned, because even with a one-year delay, we're telling people, "You don't have particular human rights for another year," and that's problematic. But it is reasonable.

Mr. Flynn: Thank you very much. That was the only question I had.

The Chair: Are there any further questions from the government side?

Mr. Jim Brownell (Stormont–Dundas–Charlottenburgh): Not a question. I want to thank you for your presentation. I just wanted to go on record that, in your quotes, I do see "MPP Bill Brownell." Bill Brownell is my youngest brother. I am Jim, and I just wanted it recorded in Hansard.

Interjection.

Mr. Brownell: Anyway, good presentation.

The Chair: Thank you to the Brownell family and thank you to Professors MacGregor and Klassen for your very thorough deputation. If the Chair may keep one of your book copies, that would be appreciated as well.

ONTARIO CONFEDERATION OF UNIVERSITY FACULTY ASSOCIATIONS

The Chair: We now move to our next presenter, from the Ontario Confederation of University Faculty Associations, Dr. Michael Doucet and company. Dr. Doucet, if you might introduce yourself and your colleagues for the purposes of the Hansard recording. You have 15 minutes to make your deputation, as you've just seen ably demonstrated, beginning now.

Dr. Michael Doucet: Thank you very much, Mr. Chair, and good morning to members of the committee.

With me this morning are Mark Rosenfeld, who is the associate executive director of OCUFA, and Donna Gray, who is our research director.

On behalf of Ontario's 13,000 university professors and academic librarians, OCUFA is pleased to come before the standing committee on justice policy to show our support for Bill 211. But we also want to voice two concerns, shortcomings if you will, in terms of the proposed legislation.

On October 19, Mr. Kevin Flynn, parliamentary assistant to the Minister of Labour, recounted for the Legislature the true-life story of one Dr. Weixuan Li. During second reading of Bill 211, Mr. Flynn told us about the unrelenting tenacity and ambition of Dr. Li. Dr. Li was a self-taught math whiz who studied by night and pulled a cart in Chairman Mao's salt mines by day. We learned that Dr. Li spent his early adulthood engaged in manual labour six days a week. At night, he studied alone in order to learn, acquiring a multitude of foreign languages and working through the advanced theorems and algorithms of math textbooks and scholarly journals that he'd managed to procure. Dr. Li moved to Canada permanently in the 1990s and, later in his career, he eventually achieved status as a full-time mathematics professor. He continued to make a formidable contribution to academe in Ontario—until recently.

Near the end of his speech, Mr. Flynn informed the Legislature that after working for so many years in a part-time capacity, Dr. Li went without full benefits or a pension. On July 1 this year, Dr. Li was forced to retire as a full-time instructor at Carleton University, having turned 65 last November. Sadly, Dr. Li is only one of the many academics in Ontario who will face the same fate.

Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement, changes the definition of age in the Human Rights Code to protect workers over 65 from being forced to retire. We applaud this government for bringing forward a long-overdue measure of justice for older Ontarians in the workforce. My colleague Mr. Rosenfeld is a marathon runner, and we feel we've all been marathon runners in bringing this legislation to its current state.

In our view, however, Bill 211 has two key flaws. You've heard these from Dr. MacGregor already, but we'd like to underscore their importance to us. Those flaws are that it takes too long to come into effect and it potentially fails to protect workplace benefits for workers once they turn 65.

OCUFA is concerned about the timeliness of Bill 211. The act does not come into effect until one year after it receives royal assent. While OCUFA appreciates the need for the government to give very careful consideration to the impact of Bill 211 on the business community, it should be understood that the business community has known legislation was on its way for at least two years. Meanwhile, not one but two cohorts of workers will be forced to retire at 65 before this bill comes into effect. Why, we ask, should thousands more Ontarians be forced into retirement only because of the

unfortunate timing of their 65th birthday? Bring Bill 211 into effect immediately after it receives royal assent. It makes no sense, in our view, to wait another year.

1030

Our second concern with Bill 211 is the possible cessation of workplace benefits for employees once they turn 65 years old. As it stands, the bill maintains and reinforces the benefit plan regulation under the Employment Standards Act, 2000, which allows employers to change or cancel the workplace benefits of workers aged 65 and up. As a result, older workers risk being stripped of benefits they were once entitled to before their 65th birthday.

OCUFA has sought a legal opinion on how other Canadian jurisdictions have dealt with the issue of benefit plans after mandatory retirement was abolished in those jurisdictions. None of the other jurisdictions has given carte blanche to employers to discriminate on the basis of age in benefit plans—none. The statutory approach preferred by the other provinces permits distinctions or preference only where they are part of a bona fide or genuine group insurance plan. This subsection in Bill 211 is unnecessarily discriminatory in light of the less restrictive alternatives adopted in other jurisdictions, and it is possible, we would argue, that the subsections dealing with benefit plans in the Workplace Safety and Insurance Act will not withstand a challenge that the law discriminates on the basis of age contrary to section 15 of the Canadian Charter of Rights and Freedoms.

OCUFA has been encouraged by the government's realization that there are certain employee groups that are currently disadvantaged by mandatory retirement, particularly women and immigrants. However, legislative short-sightedness has precluded the government from realizing that these same employee groups will feel the brunt of the cancellation of insured benefits upon turning 65.

Like Dr. Li, immigrants often arrive in the country at a later age and have not had the opportunity to secure a strong financial foothold nor a substantial pension. The same holds true for female workers who may have joined the workforce at a later stage of life due to child-rearing and/or family life commitments. Many of these women may not have had the chance to accumulate the significant amount of work time needed to secure a substantial pension past retirement age. Even though the bill is designed to give older employees the choice to work or retire, many of those persons will have no choice but to continue working without the benefits they once enjoyed.

Concerns regarding this provision have made their way on to university bargaining tables. University administrators are demanding that faculty who remain past 65 give up employment benefits. If your government turns a blind eye to this particular issue and its effect on faculty in the post-secondary education sector, not only would this create two classes of professors working in our universities, but it will undermine the benefits that some retirees currently receive as well.

Ontario universities are losing valuable people in the prime of their academic careers, particularly at a time when universities are experiencing record student enrolment. Again, OCUFA supports the government's commitment to end the archaic practice of forced retirement. However, we cannot afford to see another group of bright minds forced into retirement because of yet another year of delay, nor can we ignore the possible elimination of employee benefits after workers turn 65.

We urge your government to make the advised amendments and ensure quick passage of Bill 211.

The Chair: Thank you very much. We'll begin with the first series of questions from Monsieur Bisson.

Mr. Bisson: I understand the argument you make, which is that somebody who is 65 and can still contribute should have the opportunity to contribute. I understand philosophically where you're coming from, but it seems to me it creates an opposite problem at the other end. As it is now, in order to get hired by a university—it's fairly difficult to get on as a prof. I've got a number of nephews with Ph.D.s who have had to go to England and different places to get hired. I raise this as a question because let's say a majority of profs decide after 65 to work till they are 70, 72 or 73, whatever it is. The problem then becomes that those who are entering into university to take the place of the retiring profs are themselves older, which means they have less time to pay into a pension plan to retire at 65 if they so choose. How do you deal with that?

Dr. Doucet: That's a very good point. We're not dealing with this in isolation. As I'm sure members of the committee are well aware, Ontario in fact is coming fairly late to this game. We do have experience from other jurisdictions where they did away with mandatory retirement. In the case of Quebec, they did away with it in 1983. The evidence there is that something in the order of 2% to 4% of faculty at Quebec universities in fact are over 65. The same has held true in the US, where incidentally the mandatory retirement age was 69, not 65. The experience there is that the average age of retirement moves up, but only slightly. Currently, the average age of retirement for faculty is about 61 to 62.

Mr. Bisson: I guess my question is, should we be looking at a more comprehensive approach to this? If we're going to make this possible, how do we offset what is going to happen down the road? That question is in keeping with a question I had earlier with the other presenter. What you're going to end up with is that it's already difficult enough to get in as a prof in a university in Ontario. If you decide to stay longer, along with some of your other colleagues, that means it's slower for them to get in. How do you deal with the contributing time that they have within their pensions so they can get out?

Dr. Doucet: I think it's worth remembering that Ontario has the highest student to faculty ratio in the country. It's 24 to one. It was 18 to one 10 years ago in this province.

The Chair: We'll move to the government side now.

Mr. Flynn: Thank you for your presentation as well. As I asked a previous speaker, during the other pres-

entations there were groups that came forward and said, "I don't want you to end mandatory retirement at all." Some were saying they wanted it done and it should even be retroactive. Others—

Interjection.

Mr. Flynn: That's right. A group you'd be quite familiar with were saying we should wait seven years, I think. We came up with one year.

That seemed to have prompted some action within the university community. The University of Toronto came forward of its own volition. Can you give us any update on what may be happening at other universities along the same vein?

Dr. Doucet: Universities are moving forward to try to negotiate the end of mandatory retirement. I can't name them because some collective agreements are being ratified, but I believe we're now up to three universities that have done this.

Mr. Flynn: Two more quick questions, then. You said two cohorts will not fall under the legislation as it's proposed. Could you just explain that a little bit?

Dr. Doucet: Yes. The legislation was introduced in June, which caught last year's group, and if it doesn't come into effect until one year after royal assent, it will catch next year's group. The traditional retirement date for faculty is either June 30 or sometimes August 31.

Mr. Flynn: Would it be fair to say then—summarizing the presentation I've heard from you—that in your opinion the issue does not end here, but this is a significant step forward?

Dr. Doucet: It is a step forward, yes, a significant one.

Mr. Flynn: Very good. Thank you very much.

Mr. O'Toole: I really did appreciate the story of Dr. Li. I can also draw to mind Professor John Traill in my riding. He's a professor at U of T who has approached me and he's caught exactly in this timeline. If the legislation is delayed for a year, it is problematic for his own personal career. As you've said, and as I've understood, they're entering the most productive years in many aspects of their academic life and it's a really serious loss in that area. We're all aware of other workplace agreements where there's early retirement. There has been a real push, probably over the last 10 years, in certain sectors for freedom 55, which is completely unreasonable, technically, in my view. You're really just starting.

But then again, you look at the types of work that individuals are doing as a factor that I think will, in the collective arena, play its way out as, what is your probable life expectancy in the workplace? When you have security, tenure—as Mr. Bisson has brought up, I have two nephews, both with Ph.D.s from Canadian universities, who are in America. One's in California and one's in South Carolina. One's in biology and the other's in computer animation. They're hot-ticket items, but they can't get in. We're recruiting, and I know the double cohort and all these things affected some of the professors.

I have a question here. I agree with the two points, and I want to be on the record clearly that John Tory and the

opposition support this legislation. I think all parties had a chance to bring this forward since the ruling was made. I understand the one-year delay. There is some administrative need to advise and adjust these certain plans. The question I have is on the benefits one, which I believe, you're right, would be challenged eventually as another factor of discrimination.

If persons move employment, they can collect a Canada pension. In many cases, you could easily end up with a couple of pensions. Do you have any views on people double-dipping, as I would call it, because this could happen on the benefits side as well as getting Canada pension benefits that would accrue at 65, unless the feds change the rules? I don't get that. I don't think someone should double-dip. I don't care if you're in public office or wherever. I just don't agree with it.

Dr. Doucet: I think, as you suggested, it's perhaps up to the federal government to change some of the rules. Currently, I believe you have to start drawing your pension at age 69.

Mr. O'Toole: RRIFs and all these LIFs and all these other funds are—

The Chair: Thank you, Mr. O'Toole, and thank you as well to the deputation from the Confederation of University Faculty Associations.

POLICE ASSOCIATION OF ONTARIO

The Chair: We now invite our next presenter, I believe a veteran presenter here at the Legislature: Mr. Bruce Miller, chief administrative officer of the Police Association of Ontario. We welcome you for what is probably deputation number 25 from you, I think, but in any case, you and your colleagues are always welcome. You're welcome to introduce yourselves for the purposes of Hansard. Your time begins now.

Mr. Bruce Miller: Thank you, Mr. Chair. Actually, this is one of two deputations, because we're also appearing on OMERS autonomy later today.

With me are Karl Walsh, who is president of the Ontario Provincial Police Association, and Ron Middel, who is vice-president of the OPPA as well as a member of our board of directors. My name is Bruce Miller. I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer with the London Police Service for over 20 years prior to taking on my current responsibilities.

The Police Association of Ontario, or PAO, is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. We've included further information on our organization in our brief.

We appreciate the opportunity to appear before the standing committee today to discuss the merits of ending mandatory retirement. We also appeared before Mr. Flynn on two occasions when he held his province-wide consultation sessions on this important matter. We've copied our brief to him with this material.

We appreciate and strongly support the fact that the government has made it clear that any changes to legislation would be done “without undermining existing retirement rights—including entitlements to benefit and pension plans.” We strongly support this stand and applaud the government for affirming the importance of maintaining existing rights. As a result, our brief will not address this issue. Our comments on the proposed move to end mandatory retirement will focus solely on the potential impact on the policing profession and on community safety.

The Police Association of Ontario strongly believes that police personnel, both uniform and civilian, should be excluded from this legislation to end mandatory retirement. We believe this is in the best interests of both community and officer safety.

I think everyone realizes the challenges to community safety that police are dealing with across Ontario. Last week, we released an Innovative Research Group poll that included some of the following findings:

—Over half of Ontarians expect that they or a family member will have property stolen as a result of a break-in within the next five years.

—More Ontario residents than a year and a half ago feel that they or a family member will be physically attacked in the next five years. That was up six points to 32%.

—An overwhelming majority, 80%, say that gun violence has worsened in the past years.

—Finally, 80% of respondents agree that the role of police officers in society is distinct from other public servants.

These results demonstrate that members of the public believe public safety is a priority issue. Increasing crime, inadequate funding for police services and lax court and parole systems are all cited as key factors in people’s growing sense of unease in their communities. Ontarians believe that police personnel are vitally important in the effort to keep Ontario’s communities safe.

The need for early retirement for police officers is recognized under the federal income tax regulation for registered pension plans. Ontario’s police officers, both municipal and provincial, have pension plans based on a normal retirement age of 60, as opposed to 65 in other sectors.

It must be noted that the vast majority of police personnel in Canada and North America have pension provisions that allow for early retirement. These plans are in place to ensure that there will always be an opportunity for those who have worked in this very difficult profession to retire with dignity.

The Supreme Court of Canada has also recognized the unique nature of policing vis-à-vis mandatory retirement. In *Large v. the city of Stratford*, a police officer obliged to retire at age 60 filed a complaint with the Ontario Human Rights Commission alleging that mandatory retirement contravened the Ontario Human Rights Code on grounds of age discrimination. On appeal, the Supreme Court of Canada overturned the decision of the lower

court and reversed the original finding of the commission, holding that the mandatory retirement policy, while discriminatory, was justified as a bona fide occupational requirement.

As well, a recent human resources study of public policing in Canada undertaken by Human Resources Development Canada recognized the problem of aging within policing and stated, “The potential increase of incidences of chronic illness associated with advancing age may result in increased absenteeism or the duty to accommodate more officers whose conditions prevent them from performing regular patrol or other duties. If staffing levels remain limited, resulting additional pressures on the younger and more able-bodied may make it even more difficult to provide adequate policing levels for patrols in the coming years.”

The average entry age of police officers has risen dramatically over the past 10 years in Ontario, from 21 years of age to the current 29 years of age. Officers entering the profession at a later age might well try to take advantage of bettering their pension by staying past the mandatory retirement age. The numbers wishing to stay at work past mandatory retirement may be low on today’s date but would begin to quickly increase down the road. We believe that would not be in the best interests of community safety.

Police services employ both police and civilian members. Both groups perform equally important functions that are vital to community safety. Civilian members perform a wide variety of tasks, including the following: special constables responsible for court and jailhouse security and transportation, communicators in 911 emergency call centres, and clerks and records personnel.

All civilian employees deal with highly sensitive and confidential information. Special constables involved in court security and prisoner control deal with very dangerous individuals. Communicators, or dispatchers, are involved in highly stressful positions and deal with life-and-death matters on a daily basis.

The PAO has always believed that civilian police employees are distinct from comparable government or private sector positions due to the difficult and stressful nature of their employment. The PAO strongly believes that our civilian members should be treated the same as our police members. For this reason, we would argue that mandatory retirement provisions be maintained for both police and civilian personnel.

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Policing is a demanding profession, both physically and mentally. High stress and shift work contribute substantially to a need for an early retirement option. We need to ensure that front-line personnel have the youth and physical ability to perform their required duties. We would urge that mandatory retirement provisions remain in place for police and civilian members in order to help ensure community safety.

Finally, I’d like to thank the committee for the opportunity to appear before you once again. I would be prepared to answer any questions that you may have.

The Chair: Thank you, Mr. Miller. We'll move to the government side.

Mr. Flynn: How much time, approximately, do we have each?

The Chair: Two and a half minutes or so.

Mr. Flynn: Very good. Three quick questions: On page 18 of your report, you're saying that the entry age has changed from 20 to 29 years.

Mr. Miller: That's right.

Mr. Flynn: Do you know what the average exit age has changed to? It's fine if you don't know; it was just out of interest.

Mr. Miller: I don't know. It probably hasn't been reflected on the back end, because those people are working their way through their careers now. Ten or 15 years from now, we're going to see that the average exit age will be greatly higher.

Mr. Flynn: Do all police officers in Ontario belong to the same plan?

Mr. Miller: No. Municipal police association members belong to OMERS and the Ontario Provincial Police members are members of the Ontario Pension Board.

Mr. Flynn: In a typical plan for those members who would belong to municipal police services, is it age plus years of service that allows you to exit? Are there certain numbers?

Mr. Miller: It's either length of service or based on factors. But certainly, Ontario lags behind the rest of the provinces and North America, where all other jurisdictions provide for early retirement for police personnel.

Mr. Flynn: One final question, perhaps getting to the heart of the matter. You've made a few presentations to the committee, and I thank you for that, and you're doing the consultations. I thought they were very balanced and well done. You have asked for an outright exemption for police officers, and the proposed legislation seems to be saying that you should get caught up in the [inaudible] and that the bona fide occupational requirements should cover that off. Could you tell us why you think it would not cover that off?

Mr. Miller: I think the problem is that police associations, police employers, are going to spend a huge amount of money involved with litigation that will be going before the courts on these issues time and time again. So we think it's vitally important for police personnel to have a blanket exemption.

Mr. Flynn: Should there be an age of retirement for police officers that is standard throughout Ontario, in your opinion?

Mr. Miller: We believe it should be 65.

Mr. Flynn: Thank you very much.

Mr. O'Toole: Yes, thank you very much—quite an interesting presentation. I still think the most pertinent comment today was that individuals should have choice. While I recognize the Supreme Court decision, I still think that individual choice, as you've described it—I hope I'm not upsetting you. I'd be certain to say that we support this legislation as it is, but given the fact that the

Supreme Court decision will probably be challenged by various individuals—

As I understand the seniority thing—and I did work for 30 years in a highly unionized environment and I appreciate and respect the issue. Through seniority, over time, you often achieve a position of your liking and preference, often at the highest level of your lifetime income on the wage scale. There may be those who have achieved off-line duties—whether it's information systems or security information or other less onerous front-line duties—who want to stay, because they've taken training and courses and they like the work. Our society is going to need that experience as well, moving up, climbing ladders or wrestling with street issues. Do you understand what I'm saying? I believe most of these issues can be resolved in your collective agreements by having classifications that may be allowed to have choice.

Mr. Miller: I think what you're saying, Mr. O'Toole, would have been true 20 years ago in policing, even 15 years ago, but with civilianization now, police services have no place to put older officers in the so-called "inside jobs" that they did before. Our officers are out on the front lines. It's only been five years since I left the London Police Service. I can say, working in a downtown core area at 45 years of age five years ago, I was involved in physical confrontations of some nature almost every evening, and, frankly, we don't need 65-year-old police officers out there.

The other problem is not only for community safety but for officers' safety. If we have two officers showing up to a call, be it a fight or a domestic, and one officer is 65, it really poses some challenges in terms of officer safety.

Mr. O'Toole: I respect that. I just bring that up as something that in your negotiations of collective agreements and the method of classification of positions, whether they're civilian or non-civilian positions, that may over time be the best way to introduce this option of choice.

The Chair: Thank you, Mr. O'Toole. We'll now move to Monsieur Bisson.

Mr. Bisson: I certainly hate the buzzword "choice" because that could mean a whole bunch of things where I come from.

I just have to say I worry, like you, because in our communities all of us work with our police officers and fire services. We know what you guys go through and what the women go through. That's one of the issues that has been raised to me by some of the members of the Timmins force on this bill. They're saying exactly what you just said, and there's not a nice way to put it; that's the problem I find as a politician. A 65-year-old constable obviously has a lot of experience and probably has to put up his or her dukes far less than a 30-year-old constable. As we well know, there's a difference in approach that experience brings. But I know some of the older ones who have talked to me and who are now facing retirement don't want to go at 65, they want to go

before 65, and they're saying, "I can't do what I used to do when I was 30 years old." So I think your comments are well taken.

If you don't get the exemption, where does that leave you as far as the officer safety issue? I know that's one that has been raised with me by a couple of officers who are close to retirement, and they're retiring way before 65. Where does that leave you if you don't get the exemption?

Mr. Miller: As I said earlier, it's going to be a problem in terms of both officer and community safety. We have no place to put older officers now because of civilianization. Also, in Ontario right now we don't have early retirement for police personnel, unlike the rest of North America, and it's something that we will be addressing, obviously, this afternoon with regard to—

Mr. Bisson: Bill 206.

Mr. Miller: With 206.

Mr. Bisson: That brings me to the other point. The thing that I've learned in this Legislature after being here for four terms is that all governments try to do the right thing. I'm not going to argue for a second the government doesn't have its heart in the right place in trying to do this. But the problem is that we look at things in very narrow pigeonholes and we say, "Wouldn't the elimination of the mandatory retirement age be a great thing?" But we don't look at everything else that is affected by it. I guess my question is, should we, rather than come at this by saying we'll just eliminate the discrimination at age 65, from a broader perspective look at the changes that we have to make to the pension act, the Pension Benefits Act, all of the other legislation that's going to impact on this? Eliminating the retirement age is only one part of it. You're still going to have all kinds of problems—ripple effects. So should we have taken a more comprehensive view of this issue, if the train goes down this way?

The Chair: Briefly, Mr. Miller, if you might.

Mr. Miller: Very briefly, I think government has looked at a lot of these areas too and that's part of the Bill 206 discussions. They are looking at the broader picture on this issue and we certainly appreciate it.

The Chair: Thank you, gentlemen, for your deputation from the Police Association of Ontario. We wish you well on your second deputation today.

ONTARIO PROFESSIONAL FIRE FIGHTERS ASSOCIATION

The Chair: We now invite our next presenters, from the Ontario Professional Fire Fighters Association. Gentlemen, your written materials are now being distributed by the clerk of the committee and we'll invite Mr. Brian George, executive vice-president, and colleague to identify themselves. Gentlemen, your 15 minutes begins now.

Mr. Fred LeBlanc: Thank you, Mr. Chair and members of the committee. Good morning. My name is Fred LeBlanc and I'm the president of the Ontario Profes-

sional Fire Fighters Association. As identified, with me today is Brian George, our executive vice-president.

On behalf of the OPFFA we want to convey our appreciation for this opportunity to address you with respect to our concerns relating to the abolition of mandatory retirement as per Bill 211.

The Ontario Professional Fire Fighters Association represents over 9,700 professional full-time firefighters across Ontario. Our members perform a variety of functions within the delivery of fire protection services to the citizens of this province. Both Brian and I remain full-time firefighters today with the London and Kingston fire services, respectively. We know all too well the physical and mental requirements associated with the various roles within today's fire service.

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It has been, and continues to be, the policy of the OPFFA to encourage locals to negotiate a retirement age of 60 within their collective agreements for all firefighters. Firefighting has been widely recognized as an extremely dangerous occupation with a high incidence of job-related deaths and injuries. Our policy has been developed out of a genuine concern for the health and safety of not only firefighters, but the public. It is therefore viewed from an emergency service delivery and labour relations perspective to be in the best interests of the employer, employees and the public to identify age 60 as the mandatory retirement age for our sector. As a result, the vast majority of professional firefighters across Ontario have a mandatory retirement age of 60 recognized as a bona fide occupational qualification or requirement within their collective agreements.

To establish a BFOQ, as we know, it must be that the requirement has been imposed honestly and in good faith, that it is objectively necessary or required, and that the circumstances of the person cannot be accommodated without undue hardship considering the cost, outside sources of funding and, if any, the health and safety requirements.

Some background with respect to firefighting mandatory retirement and the Ontario Human Rights Commission: In 1982 the Supreme Court of Canada held that a municipality and a firefighters' association cannot essentially contract out of the Human Rights Code and reversed an Ontario human rights board of inquiry decision—this was *Commission v. Etobicoke*—which upheld mandatory retirement at age 60 because the decision was based solely on impressionistic evidence that was provided by those within the fire services, witnesses, to the effect that firefighting is a "young man's game." As a result, the courts required statistical and medical evidence based on observation and research on the question of aging.

Four years later, in 1986, a tribunal under the Ontario Human Rights Code exhaustively considered both impressionistic and medical evidence, as determined by the Supreme Court in the *Etobicoke* case, on the impact of aging on a firefighter's health and safety, and concluded that the retirement age of 60 was justified as a

BFOQ for firefighters. We supplied this case during the consultation phase to the Minister of Labour's staff. It was in excess of 100 pages; I didn't want to swamp you today. We rely on its extensive investigation regarding mandatory retirement within the fire service. We believe it is still relevant today.

The case combined allegations from firefighters of varying ranks within the fire service from across the province. The complainants were from St. Catharines, Waterloo and Windsor, and they worked as firefighters, lieutenants, captains, platoon chiefs and deputy chiefs. They all alleged the same charge of age discrimination.

What's important to note is that it was Professor John McCamus who was the individual who presided over this case. John McCamus is a professor of law and a former dean of Osgoode law school, and was also acknowledged in 2002 with the law society medal by the Law Society of Upper Canada. In his biography for this prestigious award, he was recognized as "a member and chair of the board of directors for the Canadian Civil Liberties Association, Professor McCamus has been instrumental in guarding the rights and freedoms of Canadians ... Professor McCamus has shown dedication to, and zeal for the rule of law, and the liberties of all."

In the McCamus decision it is clear that all relevant decisions in Ontario, Canada and the US were considered on the determination of when and how to apply a mandatory retirement age.

As previously mentioned, the decision gave extensive consideration, taking years to adjudicate to a wide range of firefighters from various fire departments. I will briefly focus on some of the details. It heard extensive impressionistic evidence from active firefighters from the various departments, and they provided testimony on job function. It also heard exhaustive statistical and medical evidence from physiologists, cardiologists and psychologists. Ironically, both the claimant's and the respondent's medical experts agreed on the fact that very few, if any, 60-year-olds possess the necessary aerobic capacity for firefighting, even if a regime of compulsory exercise was enforced throughout their career.

The decision went on to say, with respect to the increase of coronary artery disease, that, "I conclude that the employers have demonstrated that it is impractical to deal with employees on an individualized basis to determine whether a particular employee suffers from" cardiac artery disease or coronary artery disease "to such an extent that there is a substantial risk of a cardiac event occurring."

On this point, McCamus refers to the US Supreme Court decision where jurisprudence permits employers to err on the side of caution in cases such as this, where the consequences of employee failure have grave implications for public safety and the safety of fellow employees. This point is especially relevant, as firefighters typically work in pairs for safety reasons. When one firefighter's performance is affected, everyone turns their efforts to saving that firefighter, thus increasing the risk to fellow firefighters and the public.

As reported in this case, it was determined that the high threshold of all or almost all individuals identified in other cases was met. Firefighters over 60 would not possess the aerobic capacity necessary for firefighting, the incidence of coronary artery disease would increase with aging, and there are no methods of testing either aerobic capacity or the propensity for a heart attack of an individual firefighter that can safely be imposed as a substitute for compulsory retirement at age 60.

There are similar rulings across the country. In Saskatchewan, a board of inquiry was upheld by the Supreme Court of Canada in 1989, consistent with the McCamus board's conclusion that as a factual matter, individual testing was not feasible. In this respect, the board had stated:

"The safe and efficient performance of a firefighter's duties is imperative especially where a situation exists involving danger to the life of a member of the community or a fellow firefighter. It is my opinion that there is no reliable testing procedure that will accurately determine how an individual will react or be able to cope with an emergency situation."

Moreover, this decision was applied to a chief fire inspection officer on the ground. Although he had not in the past been required to fight fires, his duties required him to engage in active firefighting when called upon to do so by the fire chief. That's certainly relevant for Ontario in many of the smaller departments, where there are dual roles and they only have very few full-time firefighters. They may be providing fire inspection or training during the day, but if there's an emergency call, they'll be called upon to fight fires or engage in that emergency.

The provincial government's position was laid out by the minister in the House on April 27, 2004, when he said, "We want to make sure that we eliminate mandatory retirement, but do so in a way, however, that protects the rights of those who still wish to retire at a defined age such as 65." We recognize and appreciate the intent of this statement; however, the OPFFA strongly feels that the protection of the health and safety of the public and other firefighters also needs to be seriously considered in this consultation.

I just want to touch very briefly on occupational disease, which is on the last page. Besides lung and heart disease, which was focused on in the McCamus decision, a stark reality associated with our profession is the enhanced risk of cancers from our occupational disease and occupational hazards. A firefighter's life expectancy is typically years shorter than the average person. Currently, the Workplace Safety and Insurance Board has recognized various cancers related to our profession, and we are processing cancer claims for our members in astonishing numbers. Early retirement limits the exposure of our members to noxious substances and helps ensure that there will be a much deserved period of retirement prior to the shortened life expectancy of firefighters.

Given all of the above, the OPFFA believes that this government has the opportunity to act in a balanced

manner to address individual rights while protecting the health and safety of all firefighters and the public. So it's our recommendation that the government establish within any proposed amendments that all firefighters, as defined under part IX of the Fire Protection and Prevention Act, have a mandatory retirement age of 60. This could be accomplished by legislative recognition, through a deeming provision that the mandatory retirement of firefighters at age 60 is a bona fide occupational requirement.

We believe that the question of mandatory retirement for firefighters has already been litigated at length, with consistent rulings. Missing this opportunity to address this matter will force numerous municipalities, associations and individual firefighters to expend substantial resources and valuable time in needless litigation, and we'll be litigating this issue in perpetuity.

I'll conclude my presentation with that. Thank you again for the opportunity. We are certainly subject to any questions. That is our presentation.

The Chair: Thank you. We'll begin with the Tory caucus.

Mr. O'Toole: Thank you very much for your presentation. In the interests of time, I really have no comment. It's well documented. I think your comments from Professor McCamus are absolutely—you're trying to avoid future challenges, which was brought up by the police association. Thank you for your presentation.

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Mr. LeBlanc: Thank you, and as I said, the actual decision was supplied to the Ministry of Labour, if you require a copy.

The Chair: Thank you, Mr. LeBlanc. Now we move to Mr. Bisson.

Mr. Bisson: A couple of things: First of all, the industrial disease side of this I well know, because I started in politics doing epidemiology studies on lung cancer for gold miners, cancer of the pharynx, stomach etc.

The thing that always struck me when I would interview people—the widows and the families of the deceased miners—was that these guys worked until they died because they had no benefits. I don't have a nice way of putting this, but basically what happened was that people were forced to work because there were no benefits to sustain the family once the individual removed themselves from the workplace—it was either a silicotic or a lung cancer patient etc.—and worked as long as humanly possible, and quite frankly worked until they dropped. That's kind of the problem I'm having.

I understand the argument that people who choose to work past 65 should have a right to do so; however, it is fraught with all kinds of problems. If we don't deal with those other issues—for example, we in the steel workers tried to lower the average retirement age in the mining divisions to be able to protect workers from themselves. We did a lot of advances on health and safety and making the mine cleaner, but the problem is, it's still a risky environment, as it is for firefighters. Your comments I understand full well, and that's one of the flags that we need to raise.

I have to leave for another meeting I have to go to, and my colleague Mr. Kormos will be here later. But on that particular point, is there anything that you think we should be doing to make sure that we don't open that sort of problem?

Mr. LeBlanc: I guess just to follow along about saving workers from themselves, that's why our encouragement is to have the legislation actually identify age 60 as a bona fide occupational requirement for firefighters as defined under the act. You talked about a risky and hazardous workplace: We, under the Occupational Health and Safety Act in Ontario, do not have the right to refuse. Regardless of the status of the workplace, we don't have the right to refuse going into that workplace.

Mr. Bisson: The whole caution I give to the government, very quickly: There are certain environments in the workplace that are more dangerous than others. If you extend the retirement age, there's an effect on people's health and safety. I think we need to incorporate that in the bill, at the very least. That's my point.

Mr. LeBlanc: Thank you.

The Chair: Thank you, Monsieur Bisson. We move to the government side.

Mr. Flynn: Thank you, Mr. LeBlanc—very clear presentation, very balanced. I just wondered if you could give me a bit of a snapshot of what firefighting is like in Ontario today. Have we, for all intents and purposes, established a retirement age of 60, or are there any—let me phrase that another way: Are there any major fire services that do not use 60 as the retirement age?

Mr. LeBlanc: The city of Toronto allows its firefighters to work until age 65, and I believe Richmond Hill and possibly one other, either Milton or Halton Hills. I just don't remember off the top of my head. So there are some out there that currently allow them to work to age 65. Certainly, if age 65 was removed, then there lies the other question. When you get into larger departments, it goes back to what Mr. O'Toole asked the previous presenter about having positions that people could go to to take them out of maybe an emergency situation. Larger departments may have those opportunities, but the vast majority of departments in Ontario are not that large.

Mr. Flynn: I would imagine you plan to make presentations on Bill 206 this afternoon?

Mr. LeBlanc: I have, actually, last week, yes.

Mr. Flynn: Wonderful. Does the passing of this proposed Bill 211—it wouldn't preclude the case continuing to be made that a retirement age should be established, but what you're saying is that we should seize this opportunity and do it now.

Mr. LeBlanc: We think that it has been fully litigated in the past, and a lot of the members' associations and municipalities accepted the McCamus ruling because it took firefighters from across the province and it took firefighters of various ranks. So that meant that you had different job responsibilities: one was even in management as deputy chief, down to a supervisor role of captain or lieutenant, right down to the front-line firefighter. It was deemed across that entire spectrum

through exhaustive statistical, medical and impressionistic evidence that age 60 was appropriate.

Everybody took that snapshot in 1986 and started moving to have both parties in the collective agreements recognizing the fact that it's a bona fide occupational requirement. So age 60 is the age in the vast majority of our locals and applied to the vast majority of firefighters in the province.

What we have right now is a challenge going on in London, two in Toronto, one in Hamilton, and we have a host of others that have given indication to their locals that should this legislation not have anything in it, they are also going to go through this. What I envision is—the BFOQ is applicable on an individual basis—if Brian and I wanted to challenge it or I wanted to challenge it and I was successful, then Brian comes through and then he could challenge it. We're going to have local associations and municipalities that just simply aren't going to expend the resources time in, time out.

The Chair: Thank you, Monsieur LeBlanc, for your presentation on behalf of the Ontario Professional Fire Fighters Association.

CANADIAN AUTO WORKERS

The Chair: I would now invite respectfully our next presenter, Mr. Tony Wohlfarth, from the Canadian Auto Workers. Gentlemen, your written deputation is being distributed by the clerk. As you know, you'll have 15 minutes in which to make your remarks; as well, any remaining time would be distributed amongst the parties afterward. Please begin.

Mr. Tony Wohlfarth: Thank you very much, Mr. Chairman, for the opportunity to present to your legislative committee on behalf of the Canadian Auto Workers union. My name is Tony Wohlfarth. I'm a national representative with the pension and benefits department of the CAW. I'm joined in this presentation by Mr. Al Moss. Al is on the executive of the retired workers from CAW Local 303. He's very active in our retired workers chapters.

You have just received a copy of our brief and you'll be glad to know, Mr. Chairman, I have no intention of reading it to the members of the committee. In fact, I look forward to having a good exchange in terms of questions and dialogue.

Just by way of introduction, our union is very well known to members of the Ontario Legislature. We obviously represent members in every riding around the province and, indeed, from coast to coast. We have also been very active as a union in pension policy—the first union to negotiate 30-and-out retirement provisions, the first union to negotiate pension indexing in the private sector. We are now very much engaged in the debate which I would encourage you, as members of the Legislature, to become involved in, and that is how we can ensure that more Canadians are covered by defined benefit pension plans. It has even been drawn to the attention of the governor of the Bank of Canada that the

advantage of defined benefit pension plans is that the risk is borne by the plan and that the plan is in a better situation to bear that risk than individual plan members. So the future of defined benefit pension plans is very much on the radar screen, and I invite members of the legislative committee to get involved in that debate.

I think it's well known to all members of the Ontario Legislature that CAW—Canada does not support Bill 211. I think you'd be surprised if I came here today with a different position.

Notwithstanding that, I think it's important that we use our brief time with you today to highlight some specific concerns with the legislation. The first specific concern that we've drawn to your attention is the impact on human resources policies. There is a growing body of evidence, obviously, that in the world of no mandatory retirement—in other words, a world in which employers don't know when an individual is going to retire, in that world—we are going to see massive change in human resources policies, including performance evaluations, appraisals, pressures on older workers to perform, and demotions and dismissals, including prior to age 65. So what we're obviously looking for from this legislative committee are protections. Given that we know that's going to happen, there need to be protections built into this legislation, which there are not right now, to guard against discrimination against older workers.

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I invite you later today in your hearings to put that question to the Ontario Human Rights Commission, how they intend to protect the rights of older workers. The problem I have with their position on this issue is that they're a protagonist in the debate. Long ago, they came out in favour of eliminating mandatory retirement, so they're kind of blinkered when it comes to looking at the side impacts, the employment and human resource impacts of the issue. I hope I'm wrong in that regard, but I think you should challenge them and challenge yourselves to come up with a series of legislative and regulatory proposals that will protect older workers.

The second issue that we're raising with you—obviously, it has already been discussed—is a broad exemption for workplace agreements. We obviously have many workplaces within our union where mandatory retirement is a new one, and it seems to me, based upon what's happened in other jurisdictions, that it's fairly simple, it's fairly straightforward to provide an exemption within the legislation. We don't see that broad exemption in there. We'd like to see that exemption in the legislation and indeed in the regulations.

Last but certainly not least, our biggest concern with the elimination of mandatory retirement is that we see this as the thin edge of the wedge for eliminating pension eligibility at age 65. I'm talking initially about public pension eligibility, but I'm also talking about private pension eligibility. Obviously, that's not the will of retirees. Retirees want to retire early, and they vote with their feet in numbers to retire early where they have an adequate pension and an ability to do so. We have seen

witnesses, including the Ontario Chamber of Commerce at the consultations that took place last year on the draft legislation, say that that's what next. Employers are quite open about it. That's the way they're going in that regard. We've seen Germany most recently go in that direction—age 67—as part of the government agreement with the new chancellor, Angela Merkel. And of course we've already seen the United States move in that direction. It would be nice to see political leadership coming from this committee and ultimately from the Premier of Ontario to say, "That's not where we're going. There are guarantees. We are not going to change public pensions."

So benefits are an issue, human resource policies are an issue, and public pension eligibility is an issue. Before I close off and ask for questions, I just want to reinforce the point I made a moment ago. Seniors are not in any way clamouring for this legislation, so don't get it in your heads that this is something that's coming from seniors. Our union is very active in seniors' organizations. One of the largest seniors' organizations is the National Pensioners and Senior Citizens Federation. They have a resolution on their books raising these very same concerns and opposing the elimination of mandatory retirement because of these very same concerns. I raise that so, first of all, you'll be aware of it, because it's a very recent development. Second of all, I encourage members of the legislative committee, when you talk to the Canadian Association of Retired Persons later today, to challenge them on that question. They were recently challenged at a Saskatchewan Human Rights Commission hearing in Saskatoon on that issue; they could not answer the question, so I encourage you to follow it up with them here today and ask them that question.

The final point—and I want to give Mr. Moss an opportunity to speak to you as well—I want to reinforce before questions is that there is this sort of myth out there that workers in Ontario, of their own volition, always choose the age and the date at which they're going to retire. In fact, given what's happening with workplace restructuring, given the rate of illness that happens among workers, given the rate of marriage breakdown, given the rate of family illness, that isn't the case.

Mr. Moss, as I've mentioned, comes out of CAW Local 303. For those who are fairly new to the Legislature, Local 303 represented workers at the General Motors plant in Scarborough that closed in 1990. There were literally hundreds of workers who, as a result of that plant closure, didn't choose to retire; they retired because they had no other alternative, given the fact that their workplace had closed.

On that note, I'm going to ask Alan to talk a bit about the experience they went through with the workplace closure of General Motors in Scarborough.

Mr. Alan Moss: I retired early. I retired when I was 63. That was before this plant closed. Most of the fellows I know had different views on it entirely, when they were going to retire and how, and then when the plant closed, they had no choices left. They could take early retirement or they could go to Oshawa or Windsor to different GM

plants and work there, but there they started at the bottom of the line. They had no seniority in the plants. Therefore, they got the early work positions, which are the toughest ones in the plants.

It would be very difficult for some guys who are 40, 45 or 50 years old to be retired at that age because it's hard for them to get another job, and it's difficult to get new training. If they've been there for 20 years and they're 45 years old, it's a whole change in lifestyle entirely. It makes it difficult for them. Then travelling: They had to have good cars to go to these different jobs or move their families to these different jobs.

For the most part, they made do one way or another. I haven't talked to too many who were right out of luck. They left the union. They felt betrayed by the union, really, because there was nothing for them. What could they do? They closed the plant and tore it down. Some of them were betrayed, or felt so. Some men were not at all satisfied with the arrangements, being made to go to other places because, as I say, they got the worst jobs. This would be 2,000 people; we had 2,000 ideas, and not all of them are the same.

Me, I was all right. I made up my own mind and worked my own way. It was satisfactory to me. I had outside investments that added to my pension plan, and that helped. My Canada pension plan was reduced by 12%, 6% a year for the two years until I reached 65.

That's about the end of my statement, I think. I'm not at all prepared.

The Chair: Thank you, gentlemen. We have a reasonable amount of time for both parties. We'll begin with Mr. Racco.

Mr. Mario G. Racco (Thornhill): I appreciate the comments that were made by Mr. Wohlfarth, and I understand you're asking a question. I'm not the minister, so I can't give you much assurance, but on a personal level I appreciate that 65 should be the year where people should be collecting a pension if they choose to.

The merit that I see in this legislation is that I believe people have the right to choose when they want to stop working. Of course, I always look at my situation, and I look at the Prime Minister of Canada. He certainly is older than 65, so hopefully you're not going to suggest that he, or she in the future, won't be able to continue working.

On a personal level, when I'm 65 my daughter will be 20 years old. Hopefully, she will be doing much studying after 20, and it would be very hard for her to continue her education, if she chooses to, if I were collecting a pension.

Having said that, I hope you will see the merit in allowing people to work longer if they want to, but I do appreciate the comments you made about being 65 and being able to collect.

Those were my comments.

Mr. Flynn: Mr. Wohlfarth, when you came, you said you thought I'd be surprised if you came with any other message. I'll tell you, I was very surprised at the outset of the debate with where the CAW landed on this. I come

from Oakville. Oakville is my riding, Local 707. The CAW's got a long, proud history—

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Mr. Wohlfarth: A long and proud history.

Mr. Flynn: Yes, and the UAW before that, I think, has always been very pro-human-rights, very ahead of the game on human rights. Jim Stanford, for example, is one of the economists you employ who I think give us an insight into the economy of our country, taking into account some things that aren't taken into account by the mainstream. I think he does a super job.

Your organization, I think, is top-notch. The message is one that I'm having a hard time understanding. Is your point that we should have better pensions in this country and that workers should be treated in a better manner when they choose to retire? That I can understand. But what you appear to be saying and the message I got throughout the hearings, is that you agree that people should be forced to retire at 65. Could you just separate the two?

Mr. Wohlfarth: You've made reference to the situation at Ford. I'll be happy to elaborate on what the situation is at Ford, at General Motors and also at DaimlerChrysler. In the collective agreements at the three major automakers and, indeed, many other workplaces, we have a letter of understanding which says that employees shall retire when they reach age 65. That hasn't been controversial. That was ratified at a membership meeting, and continues to be ratified at membership meetings, including, most recently, a couple of months ago.

You'll recall that a couple of months ago, we had some difficult issues we were dealing with at Ford. I don't want you to think that that's where the debate's at in the plant. If you think that's where the debate's at in the plant, go and talk to the workers. The workers are saying, "When can I get out? Age 48, age 49, age 50—"

The Chair: Thank you, gentlemen. I might suggest that you may want to continue your conversation post-committee. Mr. O'Toole from the Tory side.

Mr. O'Toole: Thank you very much for your presentation, and that would be both of you. I had 30 years working in General Motors, about 10 of it in personnel-labour relations. I'm very familiar with Local 222. I would say that I understand that negotiations on 30-and-out and other understandings are duly appropriated by those two parties working together, the employer and the employee, and I'm certain the contracts will be challenged.

I know there are tradespeople who like to stay beyond 65. Many of them are very innovative. I know a couple in my riding who actually have patents. These people are just at the productive stage of life. I like the idea of choice. I leave the rest to you to negotiate.

But I have a predetermined interest in the whole issue of pensions. I hope you've read the comments of the Office of the Superintendent of Financial Institutions this morning in the paper. It's quite interesting. When I was assistant to the Minister of Finance, I was fortunate to do

the consultations and the report on the distribution of pension surpluses. I attended the Monsanto hearings, I watched and listened to the debate, I have federal reports on it. I'm not an expert, I'm not an actuary, but I worked with the three top actuaries in the province, both from the legal community as well as the pension organizations.

There's something that's got to happen here. You said that transition in the workplace—and my community, which includes a lot of the General Motors employees who will be affected by the 4,000-plus layoffs, is just, in my way, the beginning of a new understanding of the workplace. The unions know that as well. Certainly, the CAW is diversifying its membership list to find other than institutional, industrial organizations, because our economy, as we know, in the last year or so has lost 65,000 in the industrial sector. It's changing. Globalization is changing it, not Dalton McGuinty, essentially, any more than anyone else—

The Chair: If you might wrap up, Mr. O'Toole.

Mr. O'Toole: With your indulgence, this is a huge issue. I put to you as a challenge, firstly, that in the negotiations with the reorganization in the workplace, pensions, for the most part, should first be negotiated, and secondly, in the future probably more defined benefit plans will be gone. Defined contribution plans will be the state of the future, where they're mobile, predictable and I'm responsible. I have a role to manage my life. I don't want to end up at the end of 30 years saying, "Where are my savings?"

The Chair: Thank you, gentlemen, and to the Canadian Auto Workers for your deputation and written submission.

ONTARIO HUMAN RIGHTS COMMISSION

The Chair: I would now invite our next presenters, from the Ontario Human Rights Commission, Evangelista Oliveira, chief commissioner, and Nancy Austin, executive director. If you have any written materials for distribution, please do present them to the clerk. Your time begins now.

Ms. Nancy Austin: Thank you very much. My name is Nancy Austin. I'm the executive director of the Ontario Human Rights Commission. I am appearing here today in place of chief commissioner Ivan Oliveira, who is unfortunately unable to be here and sends his regrets. With me are Lauren Bates, senior policy analyst at the commission, and Bill Noble, executive assistant to the chief commissioner.

The Ontario Human Rights Commission welcomes the opportunity to provide comments on Bill 211, the Ending Mandatory Retirement Statute Law Amendment Act, 2005. The commission commends the government for bringing forward this legislation and supports its broad intent. However, the commission has concerns about some provisions of Bill 211.

Mandatory retirement raises a host of complex social, economic and human resources issues. At its core, however, lies a fundamental issue of human rights. Older

persons are often subject to a host of negative stereotypes and assumptions about their worth, abilities and contributions to society. Older workers are often unfairly perceived as less productive, less committed to their jobs, less dynamic or innovative and less receptive to change. It is the experience of the commission that this agism is ingrained in societal structures and attitudes, and that it can serve to disempower and devalue older persons in important aspects of their lives. Agism and age discrimination have the same impact on those who experience them as unequal treatment based on other grounds of the Ontario Human Rights Code and should evoke the same sense of moral outrage and condemnation.

In 2000, the commission launched a province-wide public consultation on age discrimination. It received a tremendous response from the public. Many of the submissions that the commission received focused on the impact of mandatory retirement. This is an issue that profoundly affects the lives of thousands of Ontarians. The vast majority of those who made submissions on mandatory retirement were in favour of ending it. In its 2001 consultation report, *Time for Action*, the commission recommended that the code be amended to eliminate the blanket defence to mandatory retirement at age 65 and to extend protection against age discrimination to workers over age 65. The commission made this recommendation based not only on the strong expressions of public concern that we heard, but based on the fundamental human rights principles of participation, individualization and dignity.

Employment is central to an individual's opportunity to participate fully in society and to feel a part of the community. Not only does employment have a major impact on a person's economic status, it also promotes independence, security, self-esteem and a sense of contributing to the community.

Mandatory retirement involves imposing an employment decision based solely on age, not on a person's ability to do the job. Mandatory retirement embodies a set of assumptions about the worth and abilities of older workers. At the core of human rights is the entitlement to be considered as an individual first and not simply as a member of a group, and to be judged on one's individual skills and abilities. As a society, we would not find it acceptable if individuals were to be terminated from employment on the basis of any other ground of the code, such as race, sex or disability.

Mandatory retirement impacts on the dignity of older employees. Being told that one is no longer a valued employee, solely because of one's age, can have a profound psychological and emotional impact.

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As well, mandatory retirement may have a particularly serious and disproportionate impact on individuals belonging to vulnerable groups. Women who leave the paid workforce to raise children or care for family members do not receive income and cannot contribute to the Canada pension plan for the years they do not work outside the home. Moreover, when they do return to paid

work once they no longer have caregiving responsibilities, they may face retirement just as they reach the peak of their careers or earning capacity. Women who are part of the paid labour force but who tend to work in sectors where employer pension plans are not available, in part-time or temporary employment and in jobs that earn considerably less than men, face a different challenge. These women are unlikely to be able to accrue a large enough CPP, RRSP or private pension to allow them to retire with a decent standard of living. Women are therefore often at a real risk of being forced into poverty as a result of mandatory retirement.

Recent immigrants face many of the same difficulties. They may have shorter periods of employment in Canada upon which to build up a pension, and they, along with racialized persons and persons with disabilities, also tend to have more restricted access to the labour market, lower incomes and greater unemployment during their working lives. As a result, these groups also face serious consequences because of mandatory retirement.

The commission therefore believes that mandatory retirement is a serious form of age discrimination and commends the government for bringing forward legislation to end this practice. The commission supports the general intent of Bill 211. However, the commission has grave concerns about some aspects of Bill 211, specifically the provisions regarding access to benefits and to workers' compensation.

Bill 211 leaves intact the provisions of the Employment Standards Act and its regulations that permit employers to discriminate in the provision of benefits against employees who are age 65 and older. This includes medical and dental benefits, as well as life and disability insurance. Employers are not prohibited from providing lesser or no benefits at all to employees once they reach age 65. Essentially, the provision of benefits to employees over age 65 is at the discretion of the employers. There may be no difference whatsoever between the skills, abilities and job duties of an employee aged 64 and one aged 65, but one will have access to benefits and the other will not. Without amendments to Bill 211, employees who are denied benefits or who receive lesser benefits solely because of their age will not be entitled to file a human rights complaint on the basis of age discrimination.

Many of those who continue to work past age 65 do so because they cannot financially afford to do otherwise. As noted earlier, this may be particularly true for women, recent immigrants, racialized persons and persons with disabilities. These are among the most vulnerable of employees, for whom the denial of benefits will have a serious economic impact.

Permitting employers to arbitrarily cut off benefits to older workers, rather than making a determination on a rational basis, is both discriminatory and unfair. There are well-established principles in human rights law for dealing with benefits and insurance issues. For example, section 22 of the code creates a defence for insurance contracts—including life, accident, sickness and dis-

ability insurance—which permits them to make distinctions on grounds such as age, sex, disability and marital status where there are reasonable and bona fide grounds to do so. Similarly, regulation 286/01 under the Employment Standards Act permits life insurance and disability benefit plans to make distinctions on grounds such as age, sex and marital status, when such distinctions are made on an actuarial basis.

The Supreme Court of Canada has supported this kind of measured approach in its decision in *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, and the commission believes that it is preferable to the use of a general exemption. This approach recognizes both the importance and primacy of human rights principles, and the requirements of operating sustainable group insurance and benefits schemes. It puts the onus on employers and insurance providers to ensure that distinctions made on code grounds are rational and defensible, not just an across-the-board cut. It also permits human rights oversight where necessary. These kinds of defences have historically operated well and appropriately. The commission therefore recommends that Bill 211's sweeping and arbitrary exemption from benefits protection for persons aged 65 and over be replaced by a more circumscribed defence for employers and insurance providers, whereby distinctions in the provision of benefits are approached on a bona fide and reasonable basis, with the employer bearing the onus of demonstrating that the practice is justified in the circumstances.

The commission also has concerns regarding Bill 211's approach to workers' compensation issues. Bill 211 amends the Workplace Safety and Insurance Act, 1997, to add a primacy clause, stating that provisions of that act, the regulations under it and any decision or policy under it that requires or authorizes a distinction made because of age shall apply despite the provisions of the code. There are very few statutes that exempt the code in that way.

This is an extremely broad clause. It authorizes distinctions to be made not only on the basis of age 65, but any age. It essentially permits the workers' compensation scheme to be exempted from all the requirements of the code regarding age. It permits no challenge or oversight under the code. The commission believes that this exemption is overly broad, and not in keeping with the code's own primacy clause.

The commission has concerns regarding particular provisions of the WSIA that will now be shielded from review under this clause. For example, section 41 requires employers to re-offer employment to those employees who have been unable to work because of injury, and who have been employed by the employer for at least one year prior to the injury. This includes a duty to accommodate the employee, to the point of undue hardship. This entitlement lasts for two years from the date of injury, or one year from the date that the employee is able to do the essential duties of the job, or until the employee reaches age 65. The impact of the exemption contemplated by Bill 211 is that workers who

are injured when they are near, at or over age 65 lose one of their most important rights under workers' compensation legislation, regardless of their individual abilities and medical status and without any individualized assessment of their circumstances.

It's unclear why older workers should be considered ineligible for re-employment and accommodation based solely on their age. This is inconsistent with widely recognized rights under the code for employees with disabilities to be accommodated in the workplace, and with human rights principles of dignity, the right to participation and integration, and individualization.

The commission believes that Bill 211's approach to benefits and workers' compensation is inconsistent with the general intent of this legislation, which is to recognize the worth and contribution of older workers, to provide workers with the dignity of choice and to ensure that employees are assessed on their skills and abilities, not on their age. The provisions of Bill 211 respecting benefits and workers' compensation are a form of age discrimination. They send a message that older workers are essentially of lesser worth and value than their younger co-workers, and reinforce negative and ageist stereotypes and assumptions about the abilities and contributions of older workers. They fail to recognize the contribution of older workers to their workplaces or the importance of work to older workers. These provisions are offensive to dignity, and the commission believes they will be vulnerable to challenge under the charter.

Should the government choose not to amend sections of Bill 211 dealing with benefits and workers' compensation, the commission recommends that the legislation include a five-year sunset clause for these provisions. During those five years, the impact of the end of mandatory retirement on benefit schemes and workers' compensation could be reviewed with a view to determining the continued appropriateness, or lack thereof, of these exemptions.

In closing, the commission once again wishes to congratulate the government on undertaking this important legislation. This is an issue of human dignity, independence and self-determination. It is important that the practice of mandatory retirement be brought to an end. It is also important that this be done in a manner that respects fairness and principles of human rights. Older workers make valuable contributions to this province every day. Their contributions and their rights must be respected.

I thank you for the opportunity to comment on this legislation, and would now be pleased to respond to any questions you may have.

The Chair: Thank you very much. We begin with the government side.

Mr. Racco: I certainly appreciated most of the comments that you made, but I want to ask you a question on the issue of new Canadians, most importantly parents—mostly mothers, but also fathers—who stay home to raise their child for a specific time or year. In my opinion, it's the best thing that anybody could do, for social and moral

reasons, but also for economic reasons. A child who grows up under a stable situation is going to be much better for the nation, for the province, not just socially, but also economically.

Have you planned, or are you planning, to speak to the federal government—because they are responsible for it—especially now when they're giving money all over the place, considering there's an election coming up shortly? Are you planning to speak to them shortly to raise those two issues specifically?

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Ms. Austin: The Ontario Human Rights Commission's jurisdiction is generally Ontario. I can take your question back to the chief commissioner and ask what he would like to do with that.

Mr. Racco: Thank you. I would recommend that you do all you can to speak to them today or in the next month or so.

Mr. Flynn: Thank you for your presentation. I think what we all recognized during public consultations was that, despite all the details and opinions that were brought, this was essentially a human rights issue. That's what I think was driving everybody.

Under the current plan with the workers' safety insurance, they're entitled to two years' benefits over the age of 63. My understanding of the proposed legislation is that that will not change. Somebody who was 67 would get covered to 69. You're saying that you don't understand it that way.

Ms. Austin: I do not understand it that way. Do you want me to have Lauren Bates address that?

Mr. Flynn: Yes, if you could expand on that, I'd appreciate it.

Ms. Lauren Bates: I think we're talking about two separate provisions. I think you're referring to the loss of earnings benefits.

Mr. Flynn: Right.

Ms. Bates: As you indicated, they go from two years, whenever they began. If you're 67 when they start, you get two years, or if you're 63, you get two years.

The provision we're specifically speaking to here is the right to re-employment, which actually has a hard cut-off now at the age of 65. You have a right under workers' compensation legislation to essentially return to your workplace. There are some specific details around that, but you have the right to return for a period of two years. However, if you're age 64 when you're injured, you'll only get one year of that. If you're age 65, you'll get none of it. There is a hard cap at age 65 in section 41 of the Workplace Safety and Insurance Act, and that's going to be protected from any review or any complaint under this proposed legislation.

Mr. Flynn: My understanding is that any proposed changes we're intending to make through this legislation would not impact the duty to accommodate. Is your understanding different?

Ms. Bates: What it would impact on is a person's rights under workers' compensation schemes. So the rights with respect to disability should not be impacted.

However, it's unclear at this point what would happen if somebody was to file a complaint under the code saying, "I've been discriminated against on the basis of disability because my employer refused to return me to work when I was able to work. I am over 65." At the same time, we've protected workers' compensation from having to return somebody. It's incoherent.

Mr. Flynn: OK, so it's unclear. We're not sure which side it's on right now and it needs to be clarified. Would that be your point?

Ms. Bates: Yes.

Mr. Flynn: Very good. Thank you.

The Chair: Thank you for the deputation from the Ontario Human Rights Commission.

CANADA'S ASSOCIATION FOR THE FIFTY-PLUS

The Chair: We'll now invite our last presenters of this particular committee hearing, from CARP, the Canadian Association of Retired Persons, fifty-plus, William Gleberzon, director of government and media relations. Mr. Gleberzon, I remind you that you have 15 minutes in which to present. Your time begins now. Please go ahead.

Mr. William Gleberzon: Can I have a second to have these passed out? OK.

I obviously want to thank the committee for the opportunity to make this presentation on Bill 211, which will affect the lives of thousands of Ontarians. I preface my comments by saying that CARP supports this bill. Our presentation is about some of the concerns we have about the bill. These were expressed in a letter that we sent to Mr. Racco after we met with him on the bill. I'll just read you what we said in that letter.

The concerns we had, first, were about the transition period. The length of the transition period proposed in the bill is one year from the date of royal assent of the bill. This is far too long, and many people will be penalized because their 65th birthdays fall within this period.

This problem could be rectified in any of the following manners, and these are some suggestions: The period should be shortened to six months; those whose birthdays fall within this time frame should be protected through a grandfather clause, which is very appropriate in this instance, if they wish to continue working; the transition period should be based on a case-by-case determination by a tribunal appointed by the government for this purpose, rather than a blanket period of time. Nevertheless, after one year from the date of royal assent, the transition period should be completed for all companies.

Secondly, protection against age discrimination: The amendments to the Ontario Human Rights Code and the Ontario Employment Standards Act, 2000, should be amended to extend protection to workers 65, without any exceptions.

The one exception retained in the current bill regarding bona fide occupational qualifications or require-

ments must be revised. Ability, not age, must remain the touchstone for choice. Safeguards must be enacted to prevent using the bona fide occupational qualifications or requirements as a back door for the de facto continuation of mandatory retirement. Rather, employers should make accommodations for employees who reach 65 before they are forced to leave, assuming, of course, these people want to continue to work. For example, they could be reassigned to teaching, coaching, mentoring or other less onerous jobs.

Collective agreements: Unions and employers would still be able to negotiate voluntary retirement incentives—for example, early retirement packages—because that's consistent with the notion of choice. However, individual workers should retain the right to opt out of such agreements if they chose to continue working.

Benefits, pensions and insurance plans: Employees should continue membership in pension plans and accrue benefits past age 65; otherwise, of course, they continue to be discriminated against, which this bill is supposed to end. Existing services or contribution caps must be extended for the length of employment after 65. Moreover, the Employment Standards Act, 2000 should be amended to permit those who are forced to retire because of age to receive notice of termination and severance pay, as any employee would.

The Workplace Safety and Insurance Act, 1997, which was so ably presented by the previous speakers: The Workplace Safety and Insurance Act, 1997, and its predecessor, the Workers' Compensation Act, and all regulations, policies and decisions made under them should be amended to extend protection to workers over 65 in the same manner as those under 65, so that the choice is in no way hampered if people decide they want to continue to work.

The next paragraph just explains how the act currently works.

Those were the issues that we brought to Mr. Racco's attention when we met with him to discuss this issue. I want to add one other comment about the hearings themselves. While CARP supports the bill entirely and congratulates the government on bringing forward the bill, we must say that we're very disturbed by the way in which this particular hearing is being held and was made known.

CARP found out about this committee hearing only indirectly yesterday before noon. A CARP member just happened to call the labour ministry to ask about progress on the bill and was told about this committee hearing and to call the clerk of the committee if she wanted to make a deputation. She was not able to do so and immediately called CARP to ensure that we would be making a presentation. If she had not called us, we would not have known, although our interest in this legislation is well known. Fortunately, we had this letter to Mr. Racco available so we could use it as the basis for our presentation on such short notice.

We're also concerned that such an important bill is being reviewed by the committee on only one day for

two hours. We're aware that tomorrow you will be reviewing it clause by clause, but nevertheless, we think that this will not provide sufficient time for many others who want to make representations on this bill. Thank you very much.

The Chair: Thank you for your deputation. We'll begin with the government side.

Mr. Racco: I'd just like to answer some of your questions. First of all, I thank you for coming. Certainly, your letter is appreciated and has been sent to the minister for his consideration. Of course, the minister will take leadership on your suggestions to us. The parliamentary assistant is here, so again, I'm sure he will certainly bring it to the minister's attention.

With regard to the fact that you were not aware, unfortunately, I didn't know and I didn't have the opportunity to investigate. But we certainly want to hear from all the people interested in the matter. As you can see, our agenda is short; you are our last presenter. We normally spend more time, if there is interest. My conclusion is that there wasn't more interest in speaking on the topic. That's why it's so short. Therefore, I don't think you should blame us on the matter, but nonetheless, I apologize for your group not being aware of this opportunity to speak and I will certainly look into the matter to find out why.

We thank you for your presentation, for your letter, and for the fact that you came to see me so that your issue will be brought to the attention of the minister. They have been, and they will be brought again today and tomorrow. Thank you again.

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Mr. Flynn: Thank you again, Mr. Gleberzon, for coming today. I think CARP has made its views very well known. This proposed bill has had extensive public consultations throughout the province, probably unlike any other bill that I've seen come forward. That may have something to do with all members agreeing that this is a schedule that could be accommodated. The House is scheduled to rise in December at some point in time and there has certainly been an urgency expressed to me by those who support the passage of this bill to get on with it. The scheduling may have as much to do with getting on with it as it has to do with excluding any points of view or trying to delimit public input. My apologies if it put your organization in that position. It certainly was done, I think, by all three parties with the best of intentions.

That being said, I know there's an interest among your members in seeing this bill proceed. We were invited by the gentleman who spoke to us from the CAW to—you were just coming into the room, I think, when he was making a point. My understanding was that your ability to speak for those over the age of 50 or those over the age of 65 had been challenged in some other area of the country, in Saskatchewan specifically. Would you care to expand on that, just so we know where we stand on it?

Mr. Gleberzon: Sure. As you know, Saskatchewan is one of the three provinces that still retain mandatory

retirement. An individual who had been forced to retire at 65—she was a librarian, part of a union—challenged her forced retirement and CARP was invited to appear at the tribunal regarding that challenge. During the course of the hearing, the labour lawyer, the union lawyer, challenged how many people had actually contacted us regarding mandatory retirement. I explained to him that the nature of our office is such that we don't keep track of the exact numbers because we just get so many calls on so many issues. Over, say, the last two years, anywhere between 200 to 300 and more have contacted us, which may appear to be a small number, yet as you know, as a politician, each person who contacts you could represent 50 or more people who feel the same way and just don't bother to contact you. That was one bit of information.

The union lawyer was dissatisfied with that, but I could understand why: because we weren't saying what he wanted us to say, which was that mandatory retirement was a good thing. We think it's a bad thing; we think people ought to have choice and have the ability to retire at, before or after 65.

The other bit of information or evidence that I brought was that Stats Canada has done a number of studies and has asked people what their plans are regarding retirement. The figures are something to the order that 18% of those who responded, and therefore 18% of Canadians, according to Stats Canada, have no plans to retire, and another 12% have no idea when they're going to retire.

I just read over the weekend a study that has been done about retirement in different countries by AARP, which is the American Association of Retired Persons, which I'm told is the second-largest lobby group in the world, after the National Rifle Association. The AARP has 36 million members, which of course is more people than exist in Canada. Their study about retirement in Canada, according to the research they had done, which was done by a very reputable research firm, was that

approximately one third of Canadians believe that they will have to continue to work after 65, for the number of reasons that have been outlined, I'm sure, by many speakers etc. Also, in the introduction to the bill, the Ontario government estimated that over 4,000 people would continue to work over the age of 65. Personally, I think the numbers will be higher, and I certainly believe the numbers will be higher in the future, as there will be more people retiring or being forced to retire. But nationally, about 6% of Canadians over the age of 65 continue to work. In a sense, regardless of the number of people who contacted us, other reputable groups have done research on this to discover that large percentages of people want to, or have to continue to work, and therefore this bill is one that moves in the right direction.

The Chair: Thank you, Mr. Gleberzon.

Mr. Flynn: Can he do a very short summary, or are we out of time? Do we have 30 seconds?

The Chair: Please go ahead.

Mr. Flynn: In summary, would it be fair to say that your preference would be that we include all the amendments that you've suggested, and that your second choice would be that the bill pass ASAP and we continue to consider some of the amendments you've suggested?

Mr. Gleberzon: Well, if that's possible. There's no question that people are very concerned about seeing this bill passed. I will say, the issue about the transition period is extremely important, as are the issues you've heard from other people too. It's one of those balancing things, and you're damned if you do and you're damned if you don't; I understand that. But we would like to see these as part of the bill, if possible.

The Chair: Thank you, Mr. Gleberzon, for your deputation on behalf of CARP.

To advise members of the committee, this committee stands adjourned until 10 a.m. tomorrow, when we begin clause-by-clause consideration.

The committee adjourned at 1207.

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Mr. Bob Delaney (Mississauga West / Mississauga-Ouest L)
 Mr. Kevin Daniel Flynn (Oakville L)
 Mr. Frank Klees (Oak Ridges PC)
Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)
 Ms. Jennifer F. Mossop (Stoney Creek L)
Mr. Shafiq Qaadri (Etobicoke North / Etobicoke-Nord L)
 Mr. Mario G. Racco (Thornhill L)
Mrs. Elizabeth Witmer (Kitchener–Waterloo PC)

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Thursday 24 November 2005

Journal des débats (Hansard)

Jeudi 24 novembre 2005

Standing committee on justice policy

Ending Mandatory Retirement
Statute Law
Amendment Act, 2005

Comité permanent de la justice

Loi de 2005 modifiant
des lois pour éliminer
la retraite obligatoire

Chair: Shafiq Qaadri
Clerk: Katch Koch

Président : Shafiq Qaadri
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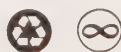
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 24 November 2005

Jeudi 24 novembre 2005

*The committee met at 1003 in room 228.*ENDING MANDATORY RETIREMENT
STATUTE LAW AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
POUR ÉLIMINER LA RETRAITE
OBLIGATOIRE

Consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement / Projet de loi 211, Loi modifiant le Code des droits de la personne et d'autres lois pour éliminer la retraite obligatoire.

The Chair (Mr. Shafiq Qaadri): Good morning, ladies and gentlemen. As you know, we are here for the standing committee on justice policy to begin clause-by-clause consideration of Bill 211, An Act to amend the Human Rights Code and certain other Acts to end mandatory retirement. Motions to be presented today have been distributed by the clerk, and I presume each and every one of you has those. If not, please let us know.

I'd also like, on our collective behalf, to welcome legislative counsel Ms. Mariam Leitman, who is present with us to help us with any background consideration of the clause-by-clause.

I'll open the floor now for general comments on any particular aspects of the bill.

Mr. Peter Kormos (Niagara Centre): I just want to very specifically thank Ms. Leitman for her assistance to me and the NDP caucus on short notice in this matter. I appreciate her prompt and thorough response to our request for help.

The Chair: Thank you, Mr. Kormos.

Thank you, again, on behalf of the committee, Ms. Leitman.

Are there now any specific motions to be entertained for, say, section 1?

Mr. Kormos: I move that subsections 1(4) and (5) of the bill be struck out and the following substituted:

“(4) Subsection 25(2) of the code is amended,

“(a) by striking out ‘age’; and

“(b) by striking out ‘Employment Standards Act’ and substituting ‘Employment Standards Act, 2000.’”

The Chair: Thank you, Mr. Kormos. Would you care to discuss your particular motion?

Mr. Kormos: I want to make it very clear that this is very specifically in response to the request of OCUFA, the Ontario Confederation of University Faculty Associations, which expressed concern about the limbo that post-age-65 workers will find themselves in with respect to any other number of rights, like WSIB, like pensions, like Employment Standards Act application. This goes to that concern expressed on their part. There was a similar concern expressed by the Canadian Auto Workers, and they were here yesterday, of course. They had specific concerns about the treatment of post-age-65 workers in terms of guarantees for maintaining the age of eligibility for public pensions; as well, the guarantee of application of Employment Standards Act and WSIB support and eligibility for age-65-and-over workers, should this bill pass.

The Chair: Is there any further discussion on that particular motion from either caucus?

Mr. Kevin Daniel Flynn (Oakville): Our side will be supporting this motion. I just wanted to put that on the record.

The Chair: Any further comments?

Mr. Norm Miller (Parry Sound-Muskoka): Is there a staff person here who could further explain what this particular change will do?

The Chair: Are there ministry people? Please come forward.

Mr. John Hill: I'm John Hill. I'm general counsel with the Ministry of Labour legal services branch.

This motion, on its face, would take away the shelter that subsection 25(2) of the Human Rights Code provides for benefit plans and pension plans that make differentiations on the basis of age where they comply with the Employment Standards Act, 2000, and the regulations made under it.

My understanding is that the government will be moving a motion subsequently which will provide some shelter, although in a different form.

The Chair: Is there any further discussion on this particular issue?

Mr. Kormos: A recorded vote, please, Chair.

Ayes

Brownell, Delaney, Flynn, Kormos, Miller, Mossop.

The Chair: I declare the motion carried.

Are there any further motions to be presented for section 1?

Mr. Flynn: I move that the bill be amended by striking out subsection 1(4) and substituting the following:

“(4) Subsection 25(2) of the code is amended by,

“(a) striking out ‘age, sex, marital status or family status’ and substituting ‘sex, marital status or family status’; and

“(b) striking out ‘Employment Standards Act’ and substituting ‘Employment Standards Act, 2000.’”

Mr. Kormos: On a point of order, Mr. Chair: I suspect that this motion and the amendment contained in it are out of order because the amendment provided by my motion did exactly what this motion does. It’s already been done. There is no “age” left in the subsection.

Mr. Flynn: With that understanding, we’d be happy to withdraw the first motion, then.

The Chair: Is legislative counsel agreeable? All right.

I thank you, Mr. Flynn, for withdrawing that particular motion on subsection 1(4).

Are there any other motions with regard to section 1?

Mr. Flynn: I move that the bill be amended by striking out subsection 1(5) and substituting the following:

“(5) Section 25 of the code is amended by adding the following subsections:

“Same

“(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the Employment Standards Act, 2000 and the regulations thereunder.

“Same

“(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer.

“Same

“(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not ‘age’, ‘sex’ or ‘marital status’ in the Employment Standards Act, 2000 or the regulations under it have the same meaning as those terms have in this act.”

Mr. Kormos: On a point of order, Mr. Chair: I put to you, sir, that this motion is out of order because there is no longer a subsection (5) to section 1 of the bill.

The Chair: Thank you, Mr. Kormos. Let us confer.

Mr. Flynn: I’m prepared to try this again, based on the advice of my friend across the table.

Mr. Kormos: Mr. Chair, if there’s going to be an amendment made by motion, may we please have a written copy of it?

Mr. Flynn: OK. I’ve got all the time in the world. We can go and have it typed up if you want to—

Mr. Kormos: Perhaps a five-minute recess?

The Chair: That’s fine. The committee stands recessed for five minutes or so for written documentation.

The committee recessed from 1012 to 1036.

The Chair: We reconvene to address Mr. Kormos’s point of order with regard to the non-existence of subsection 1(5). If there are any replies to that point of order, the committee is now ready to hear them.

Mr. Flynn: I think we have a new and improved version here. Would you like me to read the whole thing or just the paragraph that has the changes in it?

The Chair: I take it you are going to withdraw your previously submitted version?

Mr. Flynn: Yes, and replace it with subsection 1(5) of the bill, subsections 25(2.1), (2.2) and (2.3) of the Code.

I move that section 1 of the bill be amended by adding the following subsection:

“(5) Section 25 of the Code is amended by adding the following subsections:

“Same

“(2.1) The right under section 5 to equal treatment with respect to employment without discrimination because of age is not infringed by an employee benefit, pension, superannuation or group insurance plan or fund that complies with the Employment Standards Act, 2000 and the regulations thereunder.

“Same

“(2.2) Subsection (2.1) applies whether or not a plan or fund is the subject of a contract of insurance between an insurer and an employer.

“Same

“(2.3) For greater certainty, subsections (2) and (2.1) apply whether or not age, sex or marital status in the Employment Standards Act, 2000 or the regulations under it have the same meaning as those terms have in this act.”

The Chair: I advise the committee that this is considered a new motion for subsection 1(5). We’re calling it government motion number 3. Are there any discussion points on this motion?

Mr. Flynn: The intent of this, as I understand it, is to treat contract group insurance plans the same as employed sponsored plans. For any technical questions, there is staff here from the Ministry of Labour who would be able to answer.

Mr. Kormos: My concern is that this amendment reinforces discrimination against older workers—those over 65—and in some contexts, perhaps others, by permitting employee benefit programs, pension plans, group insurance plans etc. to discriminate against them because of their age. It is the parallel of section 7 in your bill, Mr. Flynn, which extends that discrimination with respect to the welfare of workers as it is dealt with by the WSIB. I’d be more than pleased to hear from one of the civil service bureaucrats here who could well shed light on this and perhaps elaborate on your explanation of the impact of this amendment. This amendment causes me great concern at this point. Perhaps that concern can be abated.

The Chair: Mr. Flynn, I understand you are obligated to invite members of bureaucratic staff. If you would care to do so, please do so.

Mr. Flynn: I didn’t realize I had to formalize that invitation.

Would you like to join us at the table, sir?

Mr. Kormos: What if he says no?

Ms. Jennifer F. Mossop (Stoney Creek): We wouldn't blame him.

Mr. Hill: The bill, as it read at first and second readings, provided a shelter for pension plans and certain benefit plans insofar as discrimination on the basis of age, insofar as age 65 and over, is concerned. In other words, the bill in effect said that a benefit plan can treat employees aged 65 or older differently than other employees. It could, in fact, even allow the plan to exclude them from coverage.

However, there has been some case law on subsection 25(2) of the Code which indicates that the shelter that subsection provides only applies to a benefit plan that is insured with an insurance company. In other words, a benefit plan that the employer self-insures does not have the benefit of the shelter provided by subsection 25(2).

The motion to amend the bill would ensure that the shelter provided by subsection 25(2) would also apply to employer self-insured benefit plans.

Mr. Kormos: Thank you kindly. I'm trying hard to read this amendment in the context of what you're saying. "The right under section 5 to equal treatment with respect to employment without discrimination because of age," which is the thrust of this bill: Is that fair?

Mr. Hill: Yes.

Mr. Kormos: That's the central point of this bill: to eliminate age 65, the upper end of the age definition.

Mr. Hill: Yes.

Mr. Kormos: It maintains the age of 18 at the lower end as a lawful discriminatory point but eliminates the upper end. The equal treatment that's being talked about is the equal treatment that now, according to the government, will be afforded all workers regardless of their senior age, 65 and over. So the right to equal treatment with respect to employment "is not infringed by an employee benefit, pension, superannuation or group insurance plan ... that complies with the" ESA "and regulations thereunder."

You see, my problem is that if the ESA didn't permit some discrimination, then there would be no need for this amendment, would there?

Mr. Hill: That's correct. The Employment Standards Act and its regulations prohibit discrimination—differentiation on the basis of age, sex or marital status—in pension plans and benefit plans, but then creates a number of exceptions in the regulations under the Employment Standards Act.

Mr. Kormos: Exactly. So what we're doing here is permitting, by statute, employee benefit, pension, superannuation or group insurance plans or funds to be discriminatory, notwithstanding that section 5 guarantees equal treatment with respect to employment.

Mr. Hill: Yes; that's what subsection 25(2) does.

Mr. Kormos: Yes, so I'm right to be concerned about this.

Mr. Hill: That's a policy question. I can't answer that.

Mr. Kormos: I suppose it depends on whether you're standing with the bosses or you're standing with the workers.

Thank you kindly. I appreciate your assistance.

This is dangerous stuff, and as I say, it is the partner of section 7, which discriminates against these workers 65 and over with respect to eligibility for workers' compensation. I am distressed that this government would market the legislation as being anti-discriminatory on the one hand, and yet on the other hand say that any number of things—we know what the problem is; I understand. The older you are, the more expensive it is to insure you for various health coverages. That's clear. We all know that, just as a result of our day-to-day lives and the lives of our parents getting insurance coverage to travel down to Florida for a month or so if you're a snowbird and a senior citizen.

But what this bill will do, then, is create two classes of workers. Since the age 65 doesn't exist any more, we don't know where that'll be. Do you understand what I'm saying? Since the age 65 doesn't exist any more, an employer can begin discriminating in these areas of employee benefits etc. even earlier than 65. Unless there's a companion section here that indicates that this doesn't kick in until a worker is age 65. To you, sir?

Mr. Hill: Perhaps it would help if I explained in more detail about the Employment Standards Act and its regulations.

Mr. Kormos: Sure.

Mr. Hill: The Employment Standards Act prohibits discrimination differentiation on the basis of age, sex or marital status. The regulations then create a number of exceptions. Some of those exceptions are based on actuarial considerations, but the exception that you're, I'm sure, concerned about is the definition of age that's in the Employment Standards Act regulations, which reads very similarly to the way that the code currently reads insofar as the definition of age is concerned. In other words, age is defined under the Employment Standards Act as an age of 18 or more and less than 65.

Mr. Kormos: And so be it. Again, I don't expect you to—you're here as a policy person who's clarifying the issues. But understand that that doesn't address my concern, because this section of the code stands alone. In other words, this amendment to the Human Rights Code will not ensure the stability of the provisions that you're talking about in the Employment Standards Act. The Employment Standards Act stands alone, as a stand-alone piece of legislation, and the regulations to it. In other words, this section to the Human Rights Code does not, because it eliminates the age 65. Notwithstanding that the Employment Standards Act incorporates the age 65, the Human Rights Code does not prevent the Employment Standards Act from subsequent revision. That's my concern, and that's obvious. That's not a profound observation.

That's my concern, I say to government members. We've got here two classes of workers, for sure beyond the age of 65 and maybe below the age of 65. I'm not suggesting that the statute in and of itself lowers the age, but it certainly doesn't protect that age.

This is exactly what people told you about. It's exactly what labour leaders like Wayne Samuelson, Sid Ryan,

Leah Casselman and so many other great people in this province expressed real concern about. We've got two classes of workers in your brave new Ontario, and I will be opposing this amendment adamantly and I will be calling for a recorded vote. This is very, very dangerous stuff. Nasty stuff too—nasty and mean.

The Chair: Any further discussion on this motion?

Mr. Flynn: At the risk of being nasty and mean, I think it's important that some facts be put on the table. Ending mandatory retirement would not have an impact on any pension benefits that have already been earned. Employees can continue membership in plans beyond the age of 65. They can accrue benefits, subject to any service or maybe contribution caps that are applicable to that individual plan. You can get your CPP. That doesn't change under the proposed bill. CPP, old age security and GIS are all administered by the federal government. That would be a matter for the federal government and certainly is nothing that is contemplated by the provincial government.

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Currently under the Employment Standards Act, employers are prohibited from discriminating on the basis of age when they provide benefits to those people between the ages of 18 and 64. This provision remains in place. Nothing in the proposed legislation would prohibit employers from providing benefits to workers beyond the age of 65. Individuals over the age of 65 would continue to be eligible for the Ontario drug benefit plan, for example. Workplace safety and insurance stays the same. The status quo remains as protection in place for those workers over the age of 63.

I think there's a lot of good being done by this bill overall. We believe that it's a matter of choice. We're trying to bring it in in a way that is sensitive to both employees and employers in this province. There's a one-year provision before it comes into effect. Everybody I've talked to believes in choice. We know there's a trend in society toward earlier retirement. We know that in the past it's become the norm, for some reason, to apply the age of 65 to a good many of our pension and retirement plans, and a host of things that we've sort of framed our society around. That attitude is changing. We think this proposed bill goes a long way toward changing with society's acceptance of the abilities and the rights of people beyond the age of 65 to enjoy the same employment rights as those under 64.

Mr. Kormos: Very briefly, of course nothing prevents an employer from providing the same benefits to a 65-and-over worker as it does to a 65-and-under worker. Similarly, there's no legislation that prevents a boss from giving his workers annual 10% salary increases and there's no legislation in the province that prevents a boss from giving workers additional holidays. The point is that your legislation doesn't require a boss to treat a 65-and-older employee the same as a 64-and-under employee with respect to things like benefits. That's what we're speaking to.

I'm calling for a recorded vote, sir.

The Chair: Is there any further discussion?

Mr. Frank Klees (Oak Ridges): With respect to this amendment, do we have on the record any opinions from employee benefit underwriters, insurance companies or pension funds as to the implication of this?

Mr. Flynn: I can address that briefly. During the consultation period, groups such as you've just outlined were consulted and their opinions were sought. If I could frame it this way, there seemed to be an expectation that there was a potential for increased expenses, but when asked, to my knowledge, the same groups that were providing that information could never quantify that amount, could never bring forward the evidence that would prove that. There just seemed to be an expectation. Experience in other jurisdictions that have implemented this type of legislation appears to be that there has not been any increase in expense to the employer or to the plans themselves.

Mr. Klees: I would find that very difficult to understand. If you have, for example, an employee benefit plan, whether it is providing dental or drug plans or some form of physiotherapy and so on, clearly the older an employee gets, the higher the risk to claim against those benefit plans. Benefit plans are a very simple structure, as you well know. It's simply premiums paid versus claims, and the net is either a surplus or it's a deficit. If at the end of the day, in any given plan, your claims are higher than your premiums, it's made up at the end of the year with a notice to the employer or to the members of the plan that your premiums, your contribution has to increase.

I'm wrestling with this issue of these consultations having taken place and we don't have an answer for this, because, as you say, there are other jurisdictions that clearly have experience. This isn't an art; this is a mathematical science. Surely there have to be programs and plans, and there have to be statistics available that very clearly say, "In jurisdiction A, where this has been in place, here is the actual experience of the financial institutions, the pension plans, the employee benefit plans." One would think that it would be very much part of our decision-making process that you as the government can point to those facts and say, "Let me give you this assurance." But you're telling me that we don't have that.

Mr. Flynn: The industry, when it was consulted, Mr. Klees, was asked those specific questions. Staff themselves went out and did an interjurisdictional scan for evidence of what the impact had been of the implementation of this legislation in other jurisdictions. Independently, we could not find that there had been any major impact on the expense of pension plans, benefit plans or dentals plans as the result of the ending of mandatory retirement. When the industry was asked to provide figures they may have that would assist us in that regard, my understanding, and to this date my knowledge, is that those figures were never provided. However, the advice that appeared to be coming from them is that there was a potential for increased expenses.

So it was sought. You certainly can't compel somebody to give you facts they either don't want to give you

or they may not have. I don't know exactly what the answer was in that regard. They were invited to provide that information.

If you look at places like Quebec and Manitoba, where this was done over 20 years ago, I don't see, or haven't heard during any of the public consultations, that their plans differ in any significant way from plans in Ontario. And they have ended mandatory retirement.

The Chair: Any reply, Mr. Klees?

Mr. Klees: Well, Mr. Chair, the best that I can do on this amendment is to abstain from voting on it. I don't know how the government can, frankly. I'm at a loss to understand how we can pass something like this without having the kind of information that I've just spoken to, which is rudimentary. For the government to say it's at a loss as to how to glean this information, confounds me. On behalf of stakeholders, on behalf of employees, on behalf of workers, on behalf of companies that pay premiums, on behalf of pension fund administrators who have responsibilities, I'm in no position to cast a vote on this.

I caution members of the government, because at some point they're going to have to answer the question: On what basis did you make this decision? Anyone who reads Hansard and reads your response is going to question your judgment on this.

Mr. Flynn: To be fair, Mr. Chair, if Mr. Klees has some information that he would like to bring to the attention of the committee, we certainly at this point in time would be more than happy to examine it. If he has been able, through his own research capabilities, to glean some information that hasn't been provided to the government, we would be quite happy to receive that information.

During the period when his own party was intent on passing this type of legislation, if there was any research that was done at that point in time that should be made available to all members of this committee before a decision is reached, as a government we would certainly welcome that.

The Chair: Thank you, Mr. Flynn.

The floor is still open for further discussion.

Mr. Klees: I'll respond to that. Mr. Flynn, if you were to compare my ability to provide you with research to the ability that your finance ministry has, I think to suggest that I can bring something forward that you can't, with all of your resources, is quite cute.

That's your responsibility. You have carriage of this legislation; I don't have it. That's why I'm asking the question. If I had it, I would—

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Mr. Flynn: The facts are there. The facts have been sought. I think we've done a very good job of the interjurisdictional scan and the information—

Mr. Klees: Fair enough. I'm saying that I don't think the ministry has done an adequate job of providing this committee and, subsequently, the Legislature with sufficient and factual information as to the implications to the employer, the pension funds, the benefit plans or

the workers. For that reason, I can't make a decision on this. I'll abstain from the vote. I'll be very interested, subsequently, in how members of the government will justify their vote on this.

The Chair: Are there any further remarks on this particular motion?

Mr. Mario G. Racco (Thornhill): I want to add my own piece. I would like to remind Mr. Klees that we're all paid by the people, and if any of us have any information, since the people paid for the information that we have, then all of us have a responsibility to provide that information.

In regard to the information that we have not being full enough to be able to make a decision, I'm surprised. The Tories are usually the ones who say that we waste too much time doing things, that they'd bring in efficiency.

I'm not going to be able to fully comment because I'm not the PA for labour, but certainly there is a time when decisions have to be made, and any information that any of us has should be shared with the committee so that the best decision can be made with the information that is available, paid by the people on behalf of the people. Those are my comments.

Mr. Klees: In this case, I think the people have been short-changed, Mr. Racco. As I've said before, whether it's the Ministry of Finance or the Ministry of Labour, you just look at the budget of this government, the multibillions of dollars that are spent. In return for those multibillions of dollars in taxes that your government strips from taxpayers, that you can't answer the fundamental, rudimentary questions that I've put to this committee is unconscionable.

Mr. Flynn: That's the wonderful thing about this place, that so many different opinions don't necessarily have to be based on fact. The consultation that was done in the preparation of this proposed legislation has been very extensive. We travelled over all the province. We heard a variety of opinions, and I'm sure there will be a variety of opinions around this table as to whether this legislation should be passed. But to suggest that somehow the research on this proposed legislation has in some way been faulty is unfair to those members of the civil service who prepared that information and, in my estimation, have done a very, very good job, both internationally and domestically, looking at the experience of our southern neighbours and those of neighbouring provinces that have already implemented this bill.

The question asked was, is there any evidence that this change would impact the expenses incurred by pension plans or by benefit plans, presumably to employers in this province? The answer has been that no evidence could be found, but to be fair to the companies that were asked, there was, in their opinion, a potential for increases to expenses. That's a very clear answer; I think that's a very fair answer.

Certainly, if there is other information out there, it's important that it be brought to this committee's attention.

The Chair: Is the committee ready to proceed to the vote on this particular motion?

Mr. Kormos: Recorded vote, please.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare the motion carried.

Is there any further discussion on this particular section, section 1? Seeing none, we'll now—

Mr. Kormos: Recorded vote.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare section 1, as amended, carried.

In order to expedite the next vote, may I ask if it be the will of the committee to collapse the block consideration of sections 2 to 9, inclusive?

Mr. Kormos: Two to 6, please.

The Chair: Two to 6, inclusive. All those in favour of block consideration of sections 2 to 6, inclusive? All those opposed? I determine that those sections have now carried.

We now move to consideration of section 7. Is there any motion or commentary on section 7?

Mr. Kormos: I'd appreciate an explanation of section 7. I've got a pretty good idea of what section 7 does: It permits older workers to be thrown to the wolves in the workplace when it comes to workplace injuries and deaths. That is to say that there still can be discrimination—to wit, discrimination against older workers; to wit, denial to them of the same levels of WSIB coverage that are available to workers who are under the age of 65. Perhaps our friend can elaborate on this.

Mr. Flynn: Certainly the status quo remains as far as WSIB is concerned. Workers in Ontario currently over the age of 63 are allowed to collect up to two years of replacement earnings. That will not change with the passage of this bill.

Mr. Kormos: If the status quo prevails, what do these sections do? Why do we need them? Are they baggage that can be discarded to clean this bill up?

Mr. Flynn: I may not have an answer that will please Mr. Kormos, but certainly any entitlement that is enjoyed by somebody in the province of Ontario over the age of 63 would continue even with the passage of this bill.

Mr. Kormos: Well, let's take a look at it carefully, then: "A provision of this act"—the Workplace Safety

and Insurance Act—"or the regulations ... or a decision made under this act" or the regs "that requires or authorizes a distinction because of age"—that's called discrimination; right, Mr. Klees? That's discrimination—"applies despite sections 1 and 5 of the Human Rights Code." There are more provisions in this bill which speak to discrimination than there are provisions which, as you would have people believe, eliminate discrimination.

I know full well what section 7 does. It puts workers 65 and over, just as the last amendment did, in a second-class position when it comes to entitlement to workers' compensation. New Democrats are adamantly opposed to section 7. We're calling for a recorded vote when the Chair finds it appropriate to call a vote.

Mr. Flynn: My understanding is that those workers over the age of 65 currently in the province of Ontario do not enjoy the same employment rights as those workers under the age of 65. We, as a government, want to change that. This party supports that; my understanding is the Progressive Conservative Party supports that. My understanding is that the New Democratic Party does not support extending that choice. There may be some conversions on the road to Damascus here; I don't know what is happening. But certainly the intent of this is to extend rights to the workers of Ontario, and we support that.

The Chair: The floor is still open for any general comments on section 7. Seeing none, we'll proceed to the recorded vote.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare section 7 to have carried.

Again, with the committee's indulgence, if sections 8 and 9 can—

Mr. Kormos: No, sir.

The Chair: We can move to consideration of section 8 individually. The floor is open for commentary on section 8.

1110

Mr. Kormos: I understand why the government would want a one-year period before this law comes into effect, but I wonder what the government then says to Wilfried Schwark of Maple, Ontario, who clearly does not share my views—he's quite specific about that—around the issue of mandatory retirement or retirement ages, who talks about "a loss of \$50,000 in taxes" that he pays every year.

I tell Mr. Schwark I'm envious. It's been a long time since I've earned enough money to pay \$50,000 in income tax. As a matter of fact, it's been around 17½ years, the number of years that I've been here, that have passed since I've been able to have the privilege of

paying \$50,000 a year in income tax. God, those were good years, the 1980s. They were Porsche years. They were Corvette years. It was a wonderful time.

To be fair, what does the government say to people like Mr. Schwark? Again, I don't agree with his position, but I also suspect that Mr. Schwark, without knowing a great deal about him other than what's in his letter, may well be working after the age of 65, whether this bill passes or not or whether it comes into effect or not. It is by inference, the sort of work that he may well be doing, because we really don't have a law against working once you're beyond 65. Regrettably, far too many people are working beyond 65 because they have to.

What do you say to Mr. Schwark, who suggests—and maybe not Mr. Schwark, but some of the others. What do you say to the university professor—again, I disagree with the government's policy in this regard—whose retirement date is, let's see, what's this? This is November. We're going to rise December 15. This bill may well get third reading, depending upon whether the government calls it before December 15. It may well have the support of the majority of the assembly. New Democrats aren't going to support it. We're opposed to it. Let's say December 15, hypothetically. What do you say to the university professor whose mandatory retirement takes place December 12, 2006: "Too bad, so sad?"

Mr. Flynn: During the consultation period, the very point that's being made was raised by a number of people who came forward. There was a variety of opinions expressed. Some people said, "Keep mandatory retirement in place. We don't agree that some workers beyond the age of 65 should have the same employment rights as those under." Some people said, "Bring it in, but wait for seven years." Some people said, "Bring it in, but bring it in retroactively." And there were a lot of people who are facing retirement coming forward and saying, "I need to make some plans in my life."

What we did at the committee level was outline the government's intent to bring an end to mandatory retirement. With that proposal looming in the future at some point, we asked employees who were facing this type of prospect, who were facing perhaps the potential of a forced retirement, to contact the Ministry of Labour. Some employers—probably the University of Toronto would be the best example—decided, when they saw that we were quite committed to making this change, that they were going to make this change ahead of the pack, and did it on a voluntary basis, which I think was an admirable way to go. From questioning the gentleman who was here yesterday from OCUFA, my understanding of the answer he gave was that there are three or four other institutions that are taking a similar approach to this.

Certainly, as with any legislation, we were provided with a variety of opinions as to what the effective date should be, based on a range. Some people were asking us to go back in time and make it retroactive; others were asking to go as far as seven years into the future. We felt that the proposal that's being put forward, a one-year provision to allow for employers to bring plans up to date

that would allow for an ending of mandatory retirement, is reasonable under the circumstances.

But Mr. Kormos is right. As with any legislation, there's a cut-off date, there's an effective date. Things like drinking ages—you can think of a variety of legislation that is date- or age-sensitive. Unfortunately, some people will be captured by it and some people will not be captured by it.

The Chair: Any further commentary? Seeing none, we will now proceed, if it be the will of the committee, to the vote.

Shall section 8 carry? All those in favour? All those opposed? I declare section 8 to have carried.

We will now proceed to consideration of section 9. Is there any general commentary on section 9?

Mr. Kormos: I'm going to use this opportunity simply to summarize New Democrats' concerns around the bill. To suggest that workers, people, have not been able to work beyond the age of 65 is not accurate. There's no law that prohibits people working beyond the age of 65. What there has been is a long-fought-for convention around retirement age—and long fought for. I am, while far from being the oldest person among members of the Legislature in this room, old enough to remember those struggles, particularly post-war, into the 1950s and even early 1960s, by workers around 40-hour workweeks, and certainly around retirement age.

This bill is going to change the culture significantly. We know that people work beyond the age of 65. Some, like university professors, do so because they have a passion for the work they do. Others—I suspect the vast majority—do it because they have no choice, because they don't have pensions or, if they do have pensions, the pensions are inadequate or they've discovered that the pension fund is bankrupt and they're getting 50 cents on the dollar. They aren't given any comfort by an adequate pension benefit guarantee fund.

Where I come from, the people I live with dream about retiring early. The Ontario Lottery and Gaming Corporation's whole advertising theme is, "Buy a lottery ticket and retire"—the freedom of being wealthy.

Trust me, when you work in a steel mill, when you work in a carborundum factory—I'll tell you, as a visitor to a steel mill, one circle of the catwalk around the arc furnace, with the molten steel bubbling and splashing two feet away from your thighs and the burns in your clothing, will assure you that when you work in that steel mill your ambition is to get the heck out of there as soon as you possibly can, before you die, because people are killed in these factories, of course, on a daily basis—regrettably, tragically—or before you poison yourself so you die far before your time.

I'm not suggesting that you haven't, but think about spending a day with a bricklayer or a carpenter or a plumber working on high-rise buildings here in Toronto. It's either the intense heat of the summer or it's the bitter cold. Trust me, if you're a bricklayer or a carpenter, if you're putting up an iron structure, you're still doing it in January and February.

1120

Believe me, these good people aren't begging for the opportunity to work beyond the age of 65. Good union movements for these people have been struggling to get them adequate levels of pension at an earlier and earlier age, because your body, when you're doing things like laying brick or block, simply doesn't permit you to work even to the age of 65. It's the exceptional, the rare, body that will accommodate that type of work.

I don't care whether it's the auto assembly worker. Go to an auto assembly line, Chair—you may well have—and merely witness that worker around the line doing the same action over and over again. As that dashboard rolls past it, they're installing the speedometer cable. Your carpal tunnel—you get a sympathy ache within minutes of watching that worker perform that job. Again, those workers don't fantasize about working into their late 60s and early 70s. They look forward to as early a retirement as possible.

The issue here is really about adequacy of pensions, and our concern as New Democrats is that this bill avoids the real debate that should be taking place. Sixty-five isn't an imaginary age. It's an age that was targeted by workers and their trade unions as an appropriate retirement age. As you well know, the whole theme of Freedom 55 is an ad campaign around private pensions, mutual fund investments, many of which took a hit when that thief John Roth from Nortel took Nortel down and so many senior citizens in this province and their savings with it, either as direct investors or as mutual fund owners.

When I say, "Change the culture," I'm just incredibly concerned about abandoning 65 as a target date for retirement. Again, you and I know full well that university professors, college professors, are the people who have been litigating this. We know what the Supreme Court of Canada said about the Human Rights Code and the retirement age. They agreed that *prima facie* was discriminatory, and they based it on a number of considerations. I'm sure everybody here has read that judgment, a very well written and lucid one. It was a justifiable discrimination because, among other things, it reinforced the concept that people should have retirements. So I'm sorry, university professors and college professors; it's easy for you to say, "We want to keep working," because your work—and I'm not diminishing it—is not the work of the steelworker or the auto plant worker or the foundry worker.

Drop-forge, down in one of the drop-forges in Welland just a couple of weeks ago: You know, they're tethered to their machines. The workers are chained to their machines—not in any negative sense. It's so their hands can't extend far enough to be caught in the hammer as it drops. So the hammer worker is chained, handcuffed to the machine. It's a safety device to prevent them from extending their hand far enough. The older ones—you see, if you come from a town where I am, you know who worked in the drop-forges. They're all the guys who had hearing aids when they were 55, the older

ones with the digits missing. They can give you the finger just by waving friendly at you, because the other four are gone.

You know who worked in the pipe mill because you see the canes at a very early age, because their backs and hips are gone. Even, quite frankly, the call centre—do you know that the largest single employer down in Welland is Canadian Tire Acceptance? We don't begrudge them those jobs. It's the largest single employer now in that old steel town of Welland: over 600 employees, many of them women, as we all know; no workers' comp. coverage because it's a financial institution. The injury there: repetitive strain injury. I'll bet you know, because you've talked to people; I know you have. The intensity of the pain of repetitive strain—carpal tunnel, for instance—is agonizing. You've had occasion, as have other members, to deal with chronic pain, back pain. Once a back is injured, that means that person will never again have a night's sleep that isn't interrupted at least four, five, six, seven, eight times unless they're so doped up that they're hung over and groggy in the morning from the sleeping pills and painkillers. When we're approaching this debate, those are the workers the New Democrats are talking about.

We're concerned, and Mr. Klees raised very clear and legitimate concerns, about the paucity of data. His concerns would be even more valid if it weren't for the fact that this legislation accommodates those bosses. The other cost would be only as much as the bosses want it to be, because they have the capacity, in this legislation, to not provide those benefits, insurance coverages etc. for those workers over 65. If you could know that every day a worker works beyond the age of 65, and therefore doesn't start collecting his or her defined benefit pension, that is a gift to the bosses in terms of the funding of that pension plan. Every day that you work after the age of 65, it's a day that you're not collecting the pension. You're also one day closer to your death.

I don't see this as a healthy direction for us to be taking in Ontario. Ms. Wynne, amongst others—and I have the highest regard for Ms. Wynne—talked about women who remove themselves from the workplace, because it's mostly women who stay home to parent, and lose 10 or 15 years of pension contribution, and the dilemma they're in and the fact that working beyond 65 will accommodate them because it will allow them to pick up those pension benefits. But to what end? Every day they work beyond the age of 65, it's one day closer to their death. They may never end up collecting those pensions once they've worked the additional 10 years to earn them.

The issue really is, again, adequacy of pension; the issue is ensuring that the work that parents do, raising children in their homes—and it's mostly women, although from time to time men do it—has value attached to it for the purpose of making it pensionable earnings. It's not a bizarre proposition, because women who were mothers and stayed at home to care for kids and care for their households—in divorce litigation, there are

monetary values attached to that, and not inappropriately. It's not wacky to suggest that there be monetary value attached to non-traditional, non-income-earning work like the work that parents do, in most cases mothers.

There was reference made to the plight of new Canadians, immigrants who come to this country who are perhaps in their 30s and 40s, even more so in their 50s, who aren't able to work long enough before the age of 65, such that they're eligible for pensions. Once again, I say that calls for discussion around the adequacy of things like income supports for senior citizens, for people who are beyond the age of 65, not just CPP, because that's income derived from their input during their traditional income-earning work years. I'm talking about social security and the adequacy of it. I regret that we're debating this kind of legislation when we really should be talking about a guaranteed annual income. Oh, what a dated concept. That takes us back to the 1960s, doesn't it? But it's a concept that has never been more relevant, in my view.

I concur with the positions put forward by the Canadian Auto Workers here yesterday, when Tony Wohlfarth addressed this committee. I share his concern and regret that the trade union movement would no longer be able to negotiate a retirement age that binds the company as well as its members. I share the concern of the Canadian Auto Workers and other workers and their unions around the two classes of workers that this bill is creating—one class of workers being those under 65, and the other class of workers being those 65 and older. Specifically, that's section 7 of the bill and section 1 of the bill, and the amendments that were brought by the government.

1130

Our motion, striking out subsection 5—that is to say, the NDP motion striking out subsection 5 of section 1—was an effort to address this, but of course the government came back and restored section 5 and all of its egregious provisions. I think people had better be careful what they wish for.

I see this as somewhat akin to Sunday shopping. I remember that debate well. Those of us who were opposed to wide-open Sunday shopping have been vindicated by history, even that relatively short history, because indeed Sunday, as a common pause day, if nothing else, has become just another day of the week, to the point where it's harder and harder for workers to negotiate overtime, for instance, for working on Sunday, because it's just another day of the week.

Classrooms in universities and colleges are used on Sunday because it's just another day of the week. If we don't think—I don't want to be overly dramatic—that abolishing that common pause day and the tradition associated with it hasn't had a societal impact in terms of families and neighbourhoods and some of the tragic things we're witnessing now in terms of the breakdown of communities—I'm talking specifically about the things in Toronto: the tragic succession of violent murders and shootings. Look, I'm not saying that if we

had maintained a common pause day, things that transpired never would have transpired, but if we don't think that doesn't have some part to play, then we're simply not thinking right.

So I tell you—and it comes as no surprise, I'm sure, to you or other members of this committee—New Democrats can't and won't support this legislation. To those people who intend to utilize it, I suppose I can say I wish them well, but for the fact that I wish their focuses had been on this whole business of ensuring that people can retire with sufficient income so they can retire at an earlier age rather than a later age, so they can retire with dignity, and so that in their retirement they can do the things that they couldn't do when they were working. They can help raise their grandkids, they can volunteer, they can teach English to new Canadians, they can travel overseas as ESL teachers in any number of countries, or they can just kick back, put their feet up and drink beer. There's nothing wrong with that either, after a lifetime of hard work.

Thank you kindly, Chair. I'll be calling for a recorded vote on this and subsequent votes this morning.

The Chair: Thank you, Mr. Kormos. The floor is open for any further general comments on section 9.

Mr. Racco: Very quickly, I just want to make sure that Mr. Kormos, I'm sure, is aware that there are people who believe in that for different reasons than maybe he and I do. For them, Sunday is just like Saturday for me, for instance. So when he makes those statements, I think we should also keep in mind that some members of our community do use Sunday equal to what would be Saturday to me. Therefore, for them, flexibility is significant with employment.

The Chair: Are there any further comments? Seeing none, we'll now proceed to the recorded vote of section 9.

Ayes

Brownell, Flynn, Racco.

Nays

Kormos.

The Chair: I declare section 9 carried.

We now proceed to consideration of the title of the bill. This is also open to general commentary. Are there any comments on this? We'll proceed to the vote.

Mr. Kormos: Recorded vote, please.

The Chair: Shall the title of the bill carry?

Ayes

Brownell, Flynn, Racco.

Nays

Kormos.

The Chair: I declare this particular item carried.
Shall Bill 211, as amended, carry?

Mr. Kormos: Chair, if I may: This is the opportunity for those members who feel that there has been inadequate data made available to the Legislature for them to vote against referring this bill back to the House and indicate clearly that this bill belongs in committee for further consideration.

I'll be asking for a recorded vote on this, please.

The Chair: Thank you for your remarks, Mr. Kormos. We'll proceed to a recorded vote unless there is any further commentary.

Shall Bill 211, as amended, carry?

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: I declare Bill 211, as amended, to have carried.

Lastly, shall I report the bill, as amended, to the House, presumably today?

Mr. Kormos: Recorded vote.

Ayes

Brownell, Flynn, Mossop, Racco.

Nays

Kormos.

The Chair: Thank you for your consideration and attention today. There being no further business before this committee, seeing none, I declare the committee adjourned.

The committee adjourned at 1138.

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Official Report of Debates (Hansard)

Friday 3 February 2006

Journal des débats (Hansard)

Vendredi 3 février 2006

**Standing committee on
justice policy**

Energy Conservation
Responsibility
Act, 2006

**Comité permanent
de la justice**

Loi de 2006 sur la responsabilité
en matière de conservation
de l'énergie

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Friday 3 February 2006

Vendredi 3 février 2006

The committee met at 0903 in room 228.

SUBCOMMITTEE REPORTS

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I would like to call the standing committee on justice policy to order. As you know, we're here to consider Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act. On behalf of the committee, I'd like to welcome the Honourable Donna Cansfield, Minister of Energy, from whom we will be hearing shortly. Before we do that, I would like to invite a member of the government side to read the reports of the subcommittee, Mr. Bas Balkissoon, who we welcome on his first day of duty in a committee of the Legislature.

Mr. Bas Balkissoon (Scarborough—Rouge River): Thank you, Mr. Chair. For the record:

Your subcommittee met on Wednesday, December 14, 2005, and Thursday, December 15, 2005, to consider the method of proceeding on Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings in Toronto on Friday, February 3, 2006; in Peterborough on Monday, February 6, 2006; in Simcoe (Norfolk County) on Tuesday, February 7, 2006; in Chatham on Wednesday, February 8, 2006; in Sudbury on Thursday, February 9, 2006; in Thunder Bay on Friday, February 10, 2006. The order of locations may change depending on travel logistics.

(2) That the minister be invited to appear before the committee at the start of public hearings for 30 minutes to make a statement and to answer questions from committee members.

(3) That following the minister's presentation, the opposition parties be allowed up to 30 minutes each to make statements and ask questions.

(4) That the clerk of the committee, as directed by the Chair, advertise information regarding the hearings for one day in all major dailies and weeklies of each of the cities to which the committee intends to travel. Advertisements will be placed in both English and French papers, where required.

(5) That the clerk of the committee, as directed by the Chair, also post information regarding the hearings on the Ontario Parliamentary Channel and on the Internet.

(6) That interested people who wish to be considered to make an oral presentation should contact the committee clerk by Tuesday, January 31, 2006 at 5 p.m.

(7) That the length of presentations for witnesses be 20 minutes for groups and 15 minutes for individuals.

(8) That the clerk distribute to the members of the subcommittee a list of all the potential witnesses who have requested to appear prior to the subcommittee meeting on Wednesday, February 1, 2006.

(9) That the research officer provide to the committee a preliminary summary of presentations prior to clause-by-clause consideration of the bill.

(10) That clause-by-clause consideration of the bill be tentatively scheduled for Wednesday, February 15, 2006, upon completion of public hearings.

(11) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair: Thank you, Mr. Balkissoon. With regard to adoption of the subcommittee report, all those in favour?

Mr. Bob Delaney (Mississauga West): On a point of order, Chair: There is an addition to the subcommittee report of—

The Chair: There is, and we will proceed to that as soon as I have the first report adopted.

Mr. Delaney: Thank you.

The Chair: Once again, all those in favour? Any opposed? I declare that subcommittee report adopted.

May we now have the second subcommittee report, Mr. Balkissoon?

Mr. Balkissoon: Your subcommittee met on Wednesday, February 1, 2006, to review the list of interested presenters for Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act, and recommends the following:

(1) That the committee meet for the purpose of holding public hearings for a second day in Toronto on Monday, February 6, 2006 to accommodate all the requests for this location

(2) That the committee meet for the purpose of holding public hearings in Thunder Bay on Thursday, February 9, 2006 instead of Friday, February 10, 2006.

(3) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the adoption of the report of the subcommittee, to commence making any preliminary arrangements to facilitate the committee's proceedings.

The Chair: Thank you, Mr. Balkissoon. Once again, with regard to adoption of the subcommittee report, all those in favour?

Mr. Delaney: On a point of order, Chair: I would like to move an amendment to the subcommittee report, adding to it an amendment deadline of 12 noon, Monday, February 13, for the submission of amendments.

The Chair: To be clear, the amendment is that you move the submission deadline for amendments—and the timing, exactly, was?

Mr. Delaney: It's 12 noon, Monday, February 13.

The Chair: Any debate, questions, comments? Seeing none, all in favour of that amendment? Any opposed? I declare that amendment carried.

I now call for adoption of the subcommittee report, as amended. All those in favour? Any opposed? I declare the subcommittee report carried.

ENERGY CONSERVATION RESPONSIBILITY ACT, 2006

LOI DE 2006 SUR LA RESPONSABILITÉ EN MATIÈRE DE CONSERVATION DE L'ÉNERGIE

Consideration of Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act / Projet de loi 21, Loi édictant la Loi de 2005 sur le leadership en matière de conservation de l'énergie et apportant des modifications à la Loi de 1998 sur l'électricité, à la Loi de 1998 sur la Commission de l'énergie de l'Ontario et à la Loi sur les offices de protection de la nature.

STATEMENT BY THE MINISTER AND RESPONSES

The Chair: We will now turn to more substantive deliberations of Bill 21. I'd like once again to welcome, on behalf of the committee, the Honourable Donna Cansfield, Minister of Energy, who hails from the great region of Etobicoke. I respectfully remind the minister that she has 30 minutes in which to make her presentation. Please begin, Minister Cansfield.

Hon. Donna H. Cansfield (Minister of Energy): Thank you very much, Mr. Chairman. I am very pleased to have this opportunity to address the standing committee and the public on the topic of energy conservation. More specifically, I'm very pleased to have the oppor-

tunity to speak to Bill 21, the Energy Conservation Responsibility Act, 2005, a bill which is another important step in the continued success of our conservation efforts in Ontario.

0910

Let me begin by saying this: Energy conservation is an imperative for Ontario. It has been imperative since the day we took office, and it will continue to be a driving principle for this government and for our energy strategy going forward. Our energy strategy balances the need for new supply with the recognition that we have vast opportunities to achieve significant reductions in our overall consumption. In addressing our energy supply needs, we are, moreover, creating a greener and more sustainable energy future for this province. We are creating opportunities for stronger communities and a stronger economy, and we are creating opportunities for all Ontarians to be involved in building this future.

We have recognized that the global landscape for energy is changing. How we view energy, how we use energy and how we value it must change as well. My government doesn't see energy conservation as a passing fad. We don't see it as a temporary solution. We see conservation as a real opportunity to help Ontarians prosper by helping them to reduce their costs and their consumption in the near, and over the longer, term.

Through energy conservation we can enhance our competitiveness, and this will assist the province invaluablely as we move forward to meet the future. Over the course of this government, we have begun to see this knowledge take root among our industries and among our citizens. Now, we must continue to move ahead, to conserve energy for the good of our economy, for the health of our global environment and, indeed, for the very health of Ontarians.

Much as conservation has been a priority for Premier McGuinty and our government, conservation has also been my personal priority. As parliamentary assistant to the previous Minister of Energy, Dwight Duncan, I had the privilege of leading our efforts to move forward on conservation. I was honoured to chair the conservation action team and, moreover, to have the opportunity to establish strong relationships with Ontario's active and committed conservation community. As the minister, I can assure you my commitment to conservation remains firm. Conservation will continue to be a key element, a keystone within our energy plan.

Today, I would like to detail some of the many important steps my government has taken towards achieving a healthier, cleaner, stronger and more prosperous Ontario. These provide the foundation for our actions going forward. The steps we have taken demonstrate our commitment to conservation. However, the steps we have taken—and there are many—are merely an indication of our resolve to do even more.

Our first immediate action was to set two ambitious conservation goals: We committed to achieving a reduction in the growth of Ontario's peak electricity demand of 5% by 2007. We also committed to showing

leadership by reducing consumption in our own operations by 10% over the same period.

The initiatives we have undertaken to date have moved us well toward meeting these essential commitments. By undertaking energy-efficient retrofits and upgrades to government buildings and making use of deep lake water cooling technology at Queen's Park, we are well over halfway to meeting our promise to reduce government consumption by 10% by 2007.

With the passage of Bill 100, the Electricity Restructuring Act, 2004, we put into motion the structural reforms needed to make conservation an integral part of our electricity system. Last year, we appointed Peter Love as Ontario's first Chief Energy Conservation Officer. His primary responsibility is to ensure that Ontario fully exploits the potential that exists within this province for achieving conservation. Mr. Love will help ensure that we achieve our goals, both by monitoring our progress and by developing province-wide programs that encourage us to conserve: in our homes, in our businesses and in our communities.

I'm proud to say that we provided a total of \$1.1 million to kick-start over 25 conservation partnerships in association with non-profit industry associations and non-governmental organizations in 2004 and 2005. These initiatives were selected to reach a wide variety of groups across Ontario, including farmers, low-income consumers, small businesses, schools, colleges, hospitals and conservation groups.

It includes initiatives like Cool Shops 2005, an initiative of the Clean Air Foundation which encourages energy conservation in small businesses. Ongoing co-operation helped them to replicate their successful small business energy conservation program in additional communities, including Peterborough, London and Ottawa.

EcoSchools, an innovative conservation outreach program aimed at students, teachers and school facilities staff, is another example of a non-government initiative which is doing great work in furthering Ontario's conservation culture.

Bill 21 will allow us to solidify this kind of partnering and will help create a culture of conservation by fostering an atmosphere of co-operation and partnership.

Among our first steps, too, we made over \$160 million available to Ontario's local distribution companies, the LDCs, and restored their ability to encourage conservation through initiatives, such as community education, through the promotion of energy-efficient products and the piloting of new technologies. We recognize that our local distribution companies are a key channel into Ontario's communities. Through their existing relationships and their key knowledge, we recognize that they can develop programs tailored to meet the specific needs of their own customers and their communities. The programs they are undertaking will provide not only tangible energy reductions but also valuable information on how to build successful programs. Six of the province's largest distribution companies have come together under the powerWise brand name to co-promote energy conservation and demand management.

On other fronts, this government has put into place a net metering regulation that is among the most progressive in North America. Net metering gives credit to customers who generate their own power from renewable sources for any excess electricity they put back into the grid. Through net metering, farmers, homeowners, small businesses and others can seize the opportunity to generate some of their own power. They can reduce their demand from the provincial grid, while continuing to have access to, and the benefit of, our secure, reliable electricity system.

Every one of these actions is aimed at ensuring that we are embracing innovation. These actions are removing the barriers to conservation and energy efficiency and promoting new technologies and new ideas. Yet, they represent just a fraction of what the government has done with respect to energy conservation. More importantly, these actions are only a first step of what we intend to do.

I am also pleased to point out that, in October, my ministry directed the Ontario Power Authority to carry out several fundamental province-wide conservation programs that would reduce electricity use by at least 200 megawatts, or enough power for 125,000 homes. The directives include: a low-income and social housing program building upon the ministry's successful pilots on energy conservation and demand-side management with various organizations; an appliance exchange program that will encourage electricity consumers to replace energy-inefficient appliances, such as refrigerators, dishwashers and freezers; and a conservation outreach and education program targeting residential consumers and small and medium-size enterprises that would promote energy-efficient lighting technologies and efficient lighting design. I also directed the Ontario Power Authority to procure 250 megawatts or more of demand management projects, and I understand that their procurement process will be announced shortly.

These kinds of fundamental conservation programs will help shift the marketplace towards greater efficiency. And let me add that all of these programs are expected to be in place by this summer.

Our government also signalled the importance of energy efficiency and conservation by making low-interest loans available to Ontario's municipalities and universities for energy-efficiency projects through the Ontario Strategic Infrastructure Financing Authority.

We know that the potential savings achievable through conservation are real, and as we move forward, the conservation bureau will continue to spearhead innovative and successful initiatives that will advance the imperative for energy conservation in our province.

In terms of changing the landscape, I should also indicate that the responsibility for, and commitment in, creating a culture of conservation does not reside within the Ministry of Energy exclusively. From new school curricula to innovations within social services, many ministries are incorporating energy efficiency and conservation into their own programs and initiatives. Our new legislation will foster that even further, and here are just a few examples:

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The government is pursuing a full examination of the building code to incorporate stringent energy efficiency and conservation requirements within its provisions. Changing the way we build this province is one of the most fundamental shifts we can make.

This is key to creating a long-term and fundamental shift in the environment. Builders and contractors should be required to consider the long-term implications of the buildings they create. Homeowners, building owners and tenants are paying for them long into the future.

The government is also considering energy conservation in the development of an affordable housing program which will build 15,000 new affordable housing units.

We are encouraging energy conservation during repairs to non-profits and co-operatives before buildings are transferred to service managers and when carrying out repairs under the rural and native housing program.

Moreover, we are currently holding working meetings with key stakeholders to obtain their views on potential Planning Act reforms that would encourage sustainable design and help support energy conservation and efficiency.

In March 2005, the government announced \$2 million in new funding for capital improvements and cost-saving upgrades, including energy-saving projects for women's shelters; for example, window replacements and upgrading to energy-efficient appliances.

All of these examples demonstrate our commitment and our progress. I could list many, many more examples, but I'd like to turn now to the legislation that we are discussing today. Bill 21 is an important step in furthering this objective.

Bill 21, the Energy Conservation Responsibility Act, 2005, represents important next steps in our efforts to create a conservation culture. It contains four schedules: Schedule A contains the Energy Conservation Leadership Act; the next schedule actually amends the Electricity Act, 1998, in order to support the government's smart metering initiative; schedule C makes required technical amendments to the Ontario Energy Board Act, 1998, as a consequence of establishing the smart metering initiative as set out; and the last schedule repeals a section of the Conservation Authorities Act to permit conservation authorities to market hydroelectric power based and created on lands under their authority.

We must work with these organizations and citizens who are prepared to show conservation leadership. We need to give Ontarians the tools and information they need to effectively incorporate conservation into their work, their homes and their everyday lives.

We know it will make a difference. According to the federal Office of Energy Efficiency, for example, Canadian businesses saved as much as \$3.4 billion in purchased energy in 2002, simply by managing their energy use more efficiently and effectively. That was 2002. Even in the narrow distance between then and now, technologies have changed. Every day there are import-

ant advances and new opportunities. Energy prices have also changed in that time. I believe that the public resolve to conserve has changed as well.

With what we now know, and with what we can now do, there is much, much more to be saved, and we can all benefit economically from eliminating energy waste. We benefit of course directly in the prices we pay for energy, but we also benefit in the prices we pay for goods and services. We benefit in the jobs that result from more efficient export.

Our public sector organizations—and I'll speak more of this later—benefit, as taxpayers also do, by having more money to devote to services and by paying less of their budgets to energy costs.

Wasting a commodity as precious as energy is an unnecessary drain on our economy and society. It's a cost we can't afford. As we work to replace over 25,000 megawatts of aging electrical generating capacity in this province, one thing is clear: Despite the prudence and innovation our government has shown, having set in motion over 9,000 megawatts of new generation, all at fair prices, replacement generation will not come cheap.

Energy wastage is more than just about dollars. Energy has environmental costs. Regardless of the source of generation, there is some environmental cost for every option to increase available energy, except conservation. Our government has taken a firm stand that we'll eliminate the worst environmental offender, coal, from our generation mix.

Of course, you can't look at the impact of coal-fired generation without being reminded of the costs energy use have on public health. So we have taken decisive action. We closed Lakeview. Three of the four remaining coal-fired generation plants will close in the near future, in 2007. Seven units at Nanticoke will close through 2008 and the last in 2009.

Many, many studies have been done over the years. Each of these studies has come to the same conclusion: Air pollution has a very negative impact on people's health. These include studies by Health Canada, the United Nations, the World Health Organization, the Ontario Medical Association and other health organizations, Environment Canada, the city of Toronto and our own environment ministry, among many other environmental organizations. The conclusions drawn within these reports have never wavered: The health impacts, the environmental impacts, including air pollution and climate change, are devastating.

Even so, in making our decision to replace coal with cleaner sources of generation, we commissioned an independent study to fully examine the impacts of coal and all of our options going forward. This report clearly demonstrates the relationship between increased air pollution from coal generation and its impact on Ontarians.

Based on this work, here are some of the numbers that we all need to consider when we talk about the true costs of coal generation in our province: 668 premature deaths per year; 928 hospital admissions per year; and 1,100

emergency room visits per year. The report pegged the annual financial, health and environmental costs of coal-fired power at \$4.4 billion annually, significantly higher than all other electricity generation options, such as gas-fired generation, renewable and nuclear.

Recognizing the true costs of coal to our health care system and our environment, there is truly no other responsible choice. That is why we are replacing coal-fired generation with cleaner, greener, affordable energy, and why conservation, the greenest source of energy, plays an important part in our planning for Ontario's future.

The Energy Conservation Responsibility Act aims to give government, the broader public service and consumers the tools needed to foster a culture of conservation in our homes, public buildings and institutions. This bill would remove additional barriers to conservation that exist and would make conservation a key element in public sector planning and operations.

Under Bill 21, ministries, agencies and broader public sector organizations would be required to prepare and publish energy conservation plans on a regular basis, and report on energy consumption, proposed conservation measures and progress on achieving results.

As servants of the public, we collectively need to ensure that we are doing all that we can when it comes to energy conservation. This bill will help by giving us the tools to carry out the job.

I've mentioned already initiatives the government itself is taking, such as energy retrofits of our government buildings, and initiatives like deep lake water cooling being expanded to include buildings at Queen's Park. Public buildings across Ontario are the symbols of our communities, be they courthouses, hospitals or schools. Energy conservation in these facilities can serve as an important example and reminder to others of the importance and methods of conservation.

We've seen real leadership among many public sector organizations—hospitals in Hamilton and Windsor, universities throughout the province, and others. What this legislation does is challenge all public sector organizations to think about how they can save energy, and to share that information and best practices within their communities, with other similar organizations across the province and with all the people of Ontario.

The legislation also recognizes the important role organizations outside the government play in encouraging conservation. Through partnerships with other organizations and communities across Ontario, non-profit organizations, environmental groups and other bodies of concerned citizens are generating ideas, initiatives and community will to spearhead conservation efforts. The legislation being reviewed by this committee builds on the resolve of this government to create a conservation culture by providing the mechanisms for further co-operation between government and these organizations.

Even without this legislation we have made significant headway. The legislation simply makes it possible to do more of a very good thing.

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Bill 21 also includes proposed legislation that would facilitate the installation of 800,000 meters by 2007, and to all Ontario homes and businesses by 2010. Smart metering is an innovative technology that will help Ontario consumers manage their energy use, encourage energy conservation and save money. Combined with a pricing structure that reflects the true cost of power production at certain times of day and year, smart metering would allow consumers to make informed decisions about their electricity use. This will allow Ontario consumers to save money and reduce the strain on the power system at peak periods.

Bill 21 also confirms our commitment to work in partnership with the local distribution companies on this historic initiative. They will continue to own, operate, maintain and install meters and will work with us as partners wherever a centralized approach makes sense.

As many as 20 of our local distribution companies have or are planning smart metering pilot projects, providing us with invaluable technological information. For example, Chatham-Kent has successfully installed as many as 1,000 meters, and meters are now being read in 11 different local communities; 200 meters have been successfully installed by Middlesex Power, a sister company of Chatham-Kent. Toronto Hydro currently has approximately 10,000 smart meters installed and capable of being read. We are supportive of these local pilot projects. Although some local distribution companies have raised concerns that Bill 21's prohibitions on discretionary metering would block these efforts, that is absolutely not the intent.

Smart meters will help consumers understand their electricity usage patterns and encourage them to shift electricity use to off-peak times. Not only will this benefit consumers by allowing consumers to take advantage of lower costs, it will also help us meet our coal phase-out targets by saving critical capacity during peak times.

The smart meters will basically replace the current meters we have in place at a cost of between \$3 and \$4 per month per customer. We do know that in a pilot project in the riding of Chatham-Kent, when the smart meters were deployed, they actually came in at one third of the estimated cost. This was a meter retrofit project. So we do have information now that they may come in under those amounts.

Bill 21 is one of the many key actions this government is undertaking to build a conservation culture in Ontario. It is an important part of our vision for the future. We will continue removing the barriers to conservation and energy efficiency and promoting new technologies and new ideas. And we will continue to provide the vision and the leadership to build a new sustainable energy future for Ontario. Thank you.

The Chair: Thank you, Minister Cansfield, for your opening statement and also for agreeing to be present for questions and comments, to which we now proceed. Mr. Yakubuski, and I remind you that you have 30 minutes.

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke): I also want to thank the minister for appearing here this morning.

We certainly support the government in efforts on conservation. We think it's very important. I don't think there's anybody out there who doesn't recognize that conservation is going to play a significant role in dealing with our energy situation and the challenges that we face here in Ontario. Even those people who make their living producing and selling energy—which means that if they're not selling energy, they're not making a living—agree that conservation is important and paramount to the success of any energy strategy here in the province of Ontario.

Having said that, I guess we have disagreements about how we're going to get there and what we can achieve through one particular form of conservation or another. That speaks to your bill today and the primary portion of that, which deals with smart metering in the province of Ontario. There are a lot of differences of opinion surrounding smart meters, and I'm going to get back to that a little later, but first I want to talk about energy policy in general, as you did as well, Minister.

You talk continuously about creating this “culture of conservation” in the province of Ontario, and it is a catchy phrase. However, I would submit that you've done more to create a culture of confrontation and a crisis of confusion in the province of Ontario as opposed to a culture of conservation with this government's energy policy.

I just wanted to rewind to 2003 and the government's promise to shut down coal-fired generation in the province of Ontario. There was agreement at that time—all parties agreed that the province faced a shortfall of electrical generational capacity. Your party said that; our party said that; the New Democrats, I believe, also said that. So when your first step as a new government says that you're going to address the shortage of electricity in this province by shutting down between 17% and 22%, depending whose numbers you're taking, of the capacity in this province, immediately the public out there has to ask themselves a question: If the problem is capacity, why is the first priority, the number one priority, that we're going to shut down all of this capacity in the province of Ontario? To me, that's tantamount to someone coming up and saying, “We've got a food crisis in this country, and we know exactly what we're going to do. The first thing we're going to do is we're going to ban farming, and that's how we're going to solve this food crisis in this country.”

You're going to shut down up to maybe 22% or 23% of our electricity capacity. So that creates this confusion because, for example, now you've got, in the city of Toronto, which we haven't been hearing a lot about in the two years previous to this, a battle with the city of Toronto about generational capacity within the city. Well, people in Toronto haven't been sleeping; they've been listening to this government saying, “We've got to shut down capacity in the province, or we've got to shut down coal in the province.” So how do you balance a

priority of shutting down one form of generation with, “Now we've got an immediate crisis. You must accept power plants in Toronto and you must do it now. There can be no opposition to it because we've got to have it done, sorry, or you're going to have rolling blackouts,” as the Premier said yesterday?

It was interesting, your conservation ads on television. One of the ads ends with the lights going out in this building. Under your policies, I think you're going to achieve your goal: The lights are going to go out in buildings all across this province because you are not addressing the real problems. You've talked many times, Minister, about removing the politics around the electricity issue when in fact it has become more political than ever. You are bent and fixated on an ideology with regard to coal, and you've said, “We had an independent report to talk about the effects of coal.” Minister, you know and I know that there is no such thing as an independent report. If you commission it, it is not an independent report. They know who's paying them for the report. Whoever commissioned this report, I suspect that of course they had no idea that you were planning to shut down all the coal generation plants in the province of Ontario by 2007, hence revised to 2009. I suppose this independent group had no idea that that was what you'd planned to do; therefore they would not have been influenced in any way, shape or form by your predisposed position with regard to coal-fired generation in the province of Ontario.

You haven't done a single thing, in your two-plus years as government, to mitigate what is happening in coal plants in the province of Ontario, to deal with emissions. They were putting out power at significant rates, hammering themselves into maintenance issues this summer, but for the most part, other than the few units that we have cleaner technology on, they were burning coal in the old way. Your government has done nothing to address that. All the jurisdictions who are in the power business—and you often cite Germany and Denmark as being leaders in the world in environmental ways of addressing their problems, be it garbage or whatever—they're burning coal and they're burning lots of it, but they're burning it cleanly because they've taken the time and made the investment in clean-coal technology.

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Everywhere you go, people are questioning your policy now. Today, the IESO report says that it's not doable. We told you that two years ago. Even the OPA report—again, an independent report, given the parameters, “Don't consider coal in the electricity supply mix. Don't look at coal, but now tell us what we need to do”—said, “Keep that coal infrastructure in place.” Keep it in place because they have no confidence in your ability as a government to actually follow through on your policy with regard to coal generation in the province of Ontario. They have no confidence in that. Even though you had essentially prohibited them from considering coal in their report, they could not responsibly produce a report without somehow addressing that; otherwise they

would not have been doing the people of the province of Ontario any kind of justice whatsoever. Even they, in the report, have indicated that they have a total lack of confidence in your ability to get this job done. Now the IESO is echoing that, people across the province are echoing that, and when we see these kinds of things happening, the result of that is that crisis of confusion and the credibility issue.

Yesterday, Michelin BFGoodrich announced 1,100 jobs closing, I think it is, in July in Kitchener. Those kinds of decisions are not made lightly. They're expanding their plants in Nova Scotia. Sixty-one thousand jobs have been lost in the last three years, most of them in 2005. Many of those jobs, no matter how you spin it, can be traced to the economic policies of this government. An economic policy is completely wrapped in its electricity policy, because you can't have a strong economy without having the ability to supply a reliable, affordable source of electricity to those who want to produce goods in the province of Ontario. The north has been hit absolutely terribly. I'm going to get back to that a little more in a minute.

I see that you've announced that you're going to have consultations on the supply mix. People have been calling for consultations on the supply mix ever since you began talking about it, and when I say "you" I mean your government, not you personally, because you didn't have the responsibility for this from day one. They've been talking about consultations. The OPA report—I didn't see any jaws dropping at that conference. I didn't see any looks of surprise. Nothing came out of the blue to anybody, including the media, including myself and any of the opposition people, and any government people there. There was nothing surprising in it; nothing at all. Given your policy, there was little else they could have come out with.

It would beg the question, why, now that you've got the report, go into consultations regarding the supply mix? You should have been consulting either before or simultaneously so that the public would have had their input at a more opportune time. We're in a crisis, and we just go from crisis to crisis by saying, "Well, let's have a little more consultation because we don't really have the you-know-what to pull the trigger here. Let's have another round of consultations; let's go to the public; let's confuse the issue a little more; let's get everybody so befuddled by it that somehow we might be able to sneak something in there." I'm not suggesting for a minute that you guys would ever do something like that.

Anyway, now we're going into consultation because they're feeling the heat from the public and from many stakeholders in the energy supply field, and people have different views about where we should be going with regard to supply mix.

On at least 12 different occasions, we've had brown-outs in Toronto this year. Somebody made the comment in the press somewhere that it's too bad we didn't actually have a blackout, because maybe people would have seen where we are. I think the average person in the

public does not recognize just exactly how difficult the situation is or how tenuous our ability to supply electricity is. The government has continued to wring its hands and drag its feet. We're only about 18 months away from the next promised provincial election of October 4, 2007, and only two months hence, we would, under your policy, shut down Lambton and Atikokan and have to have Thunder Bay converted to natural gas. But because you people have been so fixated on this coal policy, you have failed to address the other creeping issues and the other creeping crises in the electricity field. You've been so ideologically locked on getting this coal issue dealt with in the way that you believe it has to be dealt with.

This past summer, our imports of electricity from the United States were at—I don't know if they were historic highs, but quite possibly. I don't go back long enough with a personal knowledge of the situation, but they were significant. And most of that electricity was being bought and produced in coal plants in the United States, coal plants that sit directly in our airshed and affect our air even more directly than our own coal plants do.

There are so many inconsistencies in what your government is doing with regard to energy that that has got this credibility issue at play all the time. That's what has led to all the confusion among the energy players, the stakeholders and the public. That's part of the reason that you have people rising up and saying, "Do we need to build these new nuclear plants?"—which you haven't made a decision on—or, "Do we need to do this refurbishment?" or whatever. Part of what they're hearing is that we've got 6,500 megawatts of active generation right now that you guys want to rush to shut down within two years, again, doing nothing—absolutely nothing—to deal with the emissions that are currently being exhausted from these power plants. We have a great opportunity there. The technology is there to make those plants clean.

"Clean? What do you mean 'clean'?" There's no such thing as burning anything and being clean—not natural gas, not anything. If you burn something, there will be emissions. We can mitigate those to practically the levels of natural gas in most components, and we have not done anything to address that. That's something where you've completely failed.

You talked about your conservation policies and what you're planning to do. I do want to point out to you that you did away with the appliance rebate plan that was in place when you people were elected. The program that made energy-efficient appliances sales tax exempt you people did away with, and we've had nothing to replace that. I believe that happened in September 2004 or somewhere around there, or maybe the end of 2004. But we've been without one for some time. Are you encouraging people to buy energy-efficient appliances? Currently, you're not. You might have it in your plan, but you're not. We all know what can happen to plans, particularly plans that are, as they say, written on the back of a napkin under political duress. They can be

changed quite easily. We're certainly looking forward to something with regard to those issues. I certainly think we should be doing something with regard to energy-efficient lighting as well.

I want to get back to the north for a minute. I don't know how much time I've got here, either.

0950

The Chair: You've got about 13 minutes, Mr. Yakabuski.

Mr. Yakabuski: I've been speaking for 13 minutes or I have 13 minutes left?

The Chair: You have 13 minutes left.

Mr. Yakabuski: Oh, okay. Just wondering.

Getting back to the north, we've been telling you for six months or more—more, I would say—and the New Democrats have been telling you for at least that long as well, that your plans, your programs and your initiatives in the north are simply not addressing the problems. Time and time again, your people would rise in the House and say, "We're in close contact with the people in the north. We're doing everything we can to help. They're very pleased with the work we're doing," all of that kind of spin and platitudes for your own cabinet colleagues etc. in the House. Lo and behold, the Premier yesterday or the day before, in front of the media, said, "Well, I guess our plan for the north is not really working. I guess we're going to have to do something different." Somehow, maybe when those lights were going off in that building, one might have gone on in the Premier's office and they recognized that something wasn't working. I'll draw the analogy that it's like an admission: When you've been told over and over again that it's not working, it's sort of like at 11:30 p.m. admitting, "You know what? I've come to the conclusion that it's getting dark." They've had so much time to recognize that what they're doing in the north is not addressing the problems in the north, and they have not done anything.

Just last week, or maybe late the week before, Bowater, 280 jobs; Abitibi in Kenora, 360 jobs. The cracks in solidarity are showing quite clearly in your caucus and perhaps even in your cabinet, although that hasn't become apparent yet. A lot of it surrounds your electricity policy, which drives the economic policies, as you know.

The member from Thunder Bay—Superior North, Michael Gravelle, lashed out at his own government last week for their total lack of action, and misdirected action, with regard to the north. This is a senior member of the caucus who has had it with the lack of action with regard to your government. Quite frankly, I looked this morning, but I didn't see that press release on Mr. Gravelle's own website. Perhaps he's been told by the Premier's office to either not have it on or to get it off or something, because "We don't want that kind of publicity." But it is out there; it's been out there. He's been quoted in the press and he did release the press release. He's very upset.

Bill Mauro from Thunder Bay—Atikokan was quoted in the paper as saying—and I'll paraphrase him, of course, because I may not have it exactly right, "If

somebody down there doesn't start listening, I'm going to start throwing things."

These are not things that you can ignore. I'm just concerned that the whole direction of this policy seems to be driven by the ideology of one man, that being the Premier, Dalton McGuinty. I was reading during the Christmas break that the Premier likes to read a lot of poetry. I think if he's going to be reading his own electricity policy, he's going to have to become less familiar with Keats and Shelley and more familiar with Edgar Allan Poe, because that's what the electricity policy of this government is more akin to: some kind of a horror story than it is a romantic poem. However, I digress.

It seems to me that he's refusing to take any sound advice on energy policy that doesn't support where he wants to get. As I say, the problem is that the lack of credibility the government has with regard to its energy policy is siphoning confidence out of manufacturers in the province of Ontario. Most of the 61,000 jobs that have been lost were in 2005, and most of those were in manufacturing. Manufacturing jobs are good-paying jobs. I don't have to tell you that, Minister; you know that. They're among our better-paying jobs in the province of Ontario.

Now, there have been some jobs created, but the jobs that have been created do not compensate, in any way, shape or form, for the jobs that we're losing in this province. You can't replace 1,100 people at BF Goodrich Michelin with the jobs that might be created because Wal-Mart opens a new superstore—you can't do that. They're different jobs, they have different pay scales, and the contributions to the economy and the security for these people in those jobs are significantly different.

The government continues to go on and on about creating jobs at Toyota. Well, that plant is not up and operational yet, Minister. You need to stop talking about those jobs and start talking about the jobs that have been lost in this province and the jobs that are going to continue to be lost in this province if this government doesn't wake up and smell the coffee with regard to the folly of its energy policy, start seriously addressing the supply needs of this province, get off the ideological train and start addressing what are really the needs of this province with regard to energy supply.

A couple of weeks ago, you guys put out a press release that there would be a voltage reduction test. People had a warning of a couple of days, "Okay, this is what we've got to do. We want you to know what could happen if there's a voltage reduction, so that you're prepared and have a better idea of how to deal with it." You can plan for accidents, and you can think about what you might do in an accident, but until you're actually in an accident, you really don't know. A planned voltage reduction, where people have warnings, is not the same as a voltage reduction because you run into problems with summer generation, which is the reason you had this planned reduction, because you're expecting problems in the summertime.

You guys have been on a holiday this winter, because we've had one of the most mild winters in history. We

haven't had electricity issues, so to speak. Electricity's always an issue, of course, but we haven't had serious electricity shortfalls this winter because we haven't had the weather. Last winter was a different story; this winter has been very temperate. Assuming—and I never like to assume, but the expectations and the forecasts are that we're going to have a summer possibly similar to last year's. You're not going to be able to warn people the day before that there's going to be a voltage reduction. Are they going to have to be sitting and waiting and not putting a line into production because there might be a voltage reduction that day? If you're in the extrusions business—electrical cable, plastic-coated cable—and you have a voltage reduction, that whole production line is lost. It has to be continuous and it has to be consistent. If you have a voltage reduction beyond a certain point, you lose that whole line. That happened many times last summer.

Manufacturers can't live like that, in any jurisdiction. They have to be satisfied that there will be a secure supply of electricity. They have to be content that when they start up that line in the morning and bring their workers in, their hard-working people, they're going to be working for that shift, they're going to be producing for that shift, and at the end of that shift they'll have a product they can be proud of, not, "Oops. Guys, we lost the load again. Dalton McGuinty's coal plan shut down the line." That's not the way you build an economy, Minister; that's not the way you build an economy at all.

How much time do I have left?

1000

The Chair: You have three minutes, Mr. Yakabuski.

Mr. Yakabuski: Oh, boy—so many things, so little time.

Anyway, back to smart metering. As I say, there are various opinions on smart metering and whether or not we're going down the right road at all. There are experts out there who are saying, "Smart meters in homes? It's not where we should be going right now. If we really want to make a difference, get those smart meters in the commercial locations as soon as possible. They will have the biggest benefit; they will make the biggest changes." People who are out working all day, during the same period of day that the demand is highest, are not going to be making many changes in their electricity usage at home while they're away. Presumably, they would have it at a minimum anyway. I don't think they leave for work and then turn the air conditioning to 18 degrees to make sure that house is crispy cold when they come home after work in the summertime or put the heat up to 24 so it's nice and warm when they come home—no, they've already addressed that.

One thing I don't see in your plan, Minister, is apartment buildings in the city of Toronto or anywhere else. So many apartment buildings out there are bulk-metered. Why aren't you addressing that? There are significant savings to be made for people who don't actually see an electricity bill. Minister, I liken it to, if you have 500 guests at a wedding and that wedding has a cash bar, and

those same 500 people are at another wedding the next weekend and it has a free bar, there will be significantly more consumed and wasted at the free bar.

The Chair: Mr. Yakabuski, I'd ask you to bring the wedding to a closure, if you might, please?

Mr. Yakabuski: They're just coming down the aisle. Have we got a minute? So, Minister, there are tremendous savings to be made there by ensuring that people who do use electricity actually recognize what their usage is. There's a real disparity: In a large apartment building, 70% of the electricity is used by maybe 20% of the people or something—I don't have the figures right in front of me. But there are some improvements to be made there. I think those are some of the things we should be attacking as well. I'm sorry I ran out of time, but I had to cover a couple of points.

The Chair: Thank you, Mr. Yakabuski, for your comments.

We now proceed to the leader of the third party, Mr. Hampton. Again, Mr. Hampton, I remind you that you also have 30 minutes. Please begin.

Mr. Howard Hampton (Kenora–Rainy River): I thank the minister for her comments. I have a few questions that I'd like to ask. You'll know, Minister, that a very respected organization, the Canadian Environmental Law Association, together with the Pembina Institute, in May 2004 issued a very lengthy report on energy efficiency and conservation. In fact, in this report they made a number of recommendations in this report for your government to help, because they said they wanted to help create a culture of conservation in Ontario. It was a very detailed report with a number of very practical recommendations.

They have since issued an update on the status of the recommendations. I want to read from their update, because I think it sheds a lot of light on what's happening and what's not happening. For example, one of the basic recommendations they make is, "The government of Ontario should adopt minimum energy efficiency standards under the Energy Efficiency Act equivalent to the energy efficiency levels required for Energy Star labelling for all major electricity-using devices"—in other words, things like refrigerators, electric stoves, freezers—things that we use every day in our homes or apartments. Now, this is their comment as of a few weeks ago: "Unclear if Ministry of Energy currently has adequate resources to undertake a major updating project." I want to repeat, this is not ethereal science; this is fairly practical stuff.

I want to read another recommendation they made in 2004: "The provincial building code should be amended to require R2000, Canadian building improvement program ... or equivalent energy efficiency performance for all new buildings and building renovations by 2010." Their comment as of a couple of weeks ago: "No action to date."

I want to go to another recommendation: "The most ... efficient technologies in all sectors and end uses should be labelled through the Energy Star program or, if not included in Energy Star, through a provincial labelling

system.” Their comment as of a couple of weeks ago: “No action to date on appliances.”

“The government of Ontario should establish a partnership with utilities, financial institutions, energy service companies, municipalities and other stakeholders to offer a series of financing mechanisms to assist electricity consumers in all sectors to finance the adoption of energy-efficient products and technologies or other measures that can be financed out of the savings they will achieve through these investments. The upfront costs of purchasing energy-efficient goods or services can be a significant hurdle for many consumers despite the net savings that will be generated over the more efficient product’s lifecycle.”

In other words, the upfront cost of energy-saving devices may be too much for many people; therefore, the need for a financing mechanism. Once the purchase is made, energy use can be successfully decreased and therefore the initial capital cost will be more than paid for by the savings over a five- or 10-year period, thus the need for a financing mechanism. The comment of the Canadian Environmental Law Association a few weeks ago about your government: “No action to date.”

The next recommendation: “Mechanisms to ensure the delivery of programs to low-income consumers should be incorporated into the DSM mandates and incentives provided to energy and electrical distribution utilities. A specific portion of DSM spending should be set aside for this purpose, including revenues from the public benefits charge proposed in recommendation 11. Low-income households are often the most vulnerable to rising energy costs.”

Low-income households often have to make do with the most energy-inefficient appliances. Therefore, a financing strategy specifically directed at them would make sense from the perspective of fairness, but also in the sense of where the greatest gains could be made. Their comment as of a couple of weeks ago: “A low-income mandate was not included in the LCD incentives.”

Number 6, although they refer to it as recommendation 11: “A public benefit charge ... of 0.3 cents per kilowatt hour should be applied on all electricity sales to finance energy efficiency and low-income assistance programs. Such charges are common in other leading jurisdictions such as California and recognize the importance of providing funds for driving innovation and efficiency in the electricity sector.” Their comment as of a few weeks ago: “No action on general public benefits charge.”

Let me go on to the next one: “The government of Ontario should initiate a research and development program on renewable energy technologies funded through” the public benefits charge “proposed in recommendation 11. This should include both technology development and the resolution of grid integration issues. Ontario lags behind many other jurisdictions in the development of new energy technologies and industries, an area poised for huge growth in coming decades.” That was the recommendation made two years ago. Their comment as of a few weeks ago: “No action to date.”

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I want to just contrast what’s not happening in Ontario with what is happening in other provinces. I note, by the way, that you launched another advertising program. It’s remarkable how much your government will hold photo ops talking about the culture of conservation, and how often you launch advertising programs, but as the Canadian Environmental Law Association points out, when you look for the meat in the sandwich, there’s not much meat.

I want to contrast your advertising program with what is actually happening in the provinces of Manitoba and Quebec. In both of those provinces, someone living in an older home that is inefficient in its use of energy—let’s say a home that is badly insulated, that has old windows—could actually apply for a low-interest loan—I’m told it’s up to \$5,000 in Manitoba—to insulate their home, put in energy-efficient appliances and, in effect, reduce their use of electricity and other forms of energy. I look in Ontario to see if there is any such broadly based strategy, and I can’t find one.

A similar strategy exists in Quebec. In fact, Quebec has taken it a level further: Last summer Quebec started retrofitting older apartment buildings in the city of Montreal. Those older apartment buildings would be much like the older apartment buildings you find, say, in Toronto or Hamilton. Many of them were built cheap in the 1950s, 1960s and 1970s. They have virtually no insulation. They had electric heat installed because it was quick, cheap and easy to install, although it’s terribly inefficient as a heating agent and terribly wasteful. Quebec actually started a financing project to retrofit many of those apartment buildings—to install proper insulation, to take out the electric heat, to put in high-efficiency natural gas—so that in the winter when it’s cold there is an efficient heating system and good insulation to keep the cold out and keep the building warm without using a lot of electricity. In the summer, there are insulation and energy-efficient windows to keep the heat out so you don’t guzzle electricity of the purposes of air conditioning.

I searched to see if there was any kind of strategy under your government in Ontario to do a similar thing. I couldn’t find anything.

I just want to read the summary of the updated Power for the Future, because I think the summary is in many ways even more insightful in what it says. The summary is found on page 14 of the updated report. What’s interesting about the summary is that under “Adoption of revised energy efficiency standards under the Energy Efficiency Act” it says there has been no action to date by this government. It says, “The only new standards adopted since October 2003 were actually initiated by the previous government,” actually initiated by the Conservative government.

It also raises the issue of tax incentives for people to purchase energy-efficient appliances. It points out in the summary, and I think this is really remarkable, that a provincial sales tax rebate on Energy Star rated

appliances was actually terminated in July 2004 by your government. This is a very reputable environmental organization that says there's either no action on most of these fronts or there's negative action. Things that were actually put in place by the previous government to enhance the purchase of energy-efficient appliances have been taken away or done away with by your government. Can you explain to us how such a reputable environmental organization that has given your government very concrete, very specific, very practical recommendations would now come along not even two years later and say that on most of these things there's been either no action or in some cases there's been negative action?

The Chair: Thank you, Mr. Hampton. Minister?

Hon. Mrs. Cansfield: Mr. Chair, would you like me to respond to Mr. Yakubuski first?

The Chair: You have 20 minutes between—

Hon. Mrs. Cansfield: I'll try to cover—I think there were some questions that you raised.

Mr. Yakubuski: I didn't ask a question.

Hon. Mrs. Cansfield: There were some issues. Maybe I can help.

Actually, I'm pleased to know that both of the opposition parties embrace conservation as an integral part of looking to the future of energy plants. I know that both of them have the same policy as we do on shutting down the coal-fired plants, because they both had those in their policy platforms. The difference was, obviously, just the dates.

I wanted to speak to a couple of things, though. One is, you've mentioned the IESO report, so I will respond to it. At no time did this government ever say that they would put the electricity supply in jeopardy in this province, that we will not shut down any coal-fired plant until there is sufficient new generation online. I just wanted to repeat that.

Interjection.

Hon. Mrs. Cansfield: No, it's not a change, actually. It's been said all along.

I know it's a real challenge when industries leave. I'd just speak to the one that you identified this morning. Obviously, when I listened to the news as well, they had identified competition as a huge issue for them. But it was interesting that they are moving to Nova Scotia, where, in fact, they just asked for a 12% increase in their energy prices through their regulator. Those things happen, and I guess decisions are made within businesses for a variety of reasons.

You spoke about the OPA consultation. Through Bill 100, we very specifically identified the OPA, the Ontario Power Authority, as a body that would put in place a requirement for looking at the mixed fuel supply for the future. We said that we would do the short term; we indicated we would do that through maximizing our existing generation and our transmission capacity. We would build new generation, with an emphasis on renewables, and we would also create the conservation culture. In looking at the challenges that we have as we move forward in these areas—we're well aware of those

challenges. You have to be prudent and responsible as you look forward to what you're doing.

In the conservation that was undertaken by the Ontario Power Authority, they believed there was very extensive consultation. They advertised in 40 newspapers. They were in a variety of different communities. They had invited stakeholders in—all stakeholders, from those who had a vested interest to those who had no vested interest—and yet the communities thought they hadn't been heard.

Remember, the mixed fuel supply then forms part of the decision-making process for what the supply mix will look like, then the Power Authority is charged with the responsibility of putting together an integrated system plan. That system plan then must go to the Ontario Energy Board, and it comes under public scrutiny. Then, project after project would come under public scrutiny as we move forward, because of whatever is required. So there's a long process of public involvement all the way through.

What we decided to do in addition to this was to go to 12 communities. I have said—and I thank the member here, Mr. Hampton, for his help. A lot of people have come to see me with a variety of different perspectives. We recognize that that's not possible for everyone, so we've made the decision to go out with four teams into 12 communities to not only provide information for people who have questions but also the opportunity for them to express their opinions to us. That is part of why the consultation is taking place.

The appliance rebate program was a fine program, but one of the challenges we had with the program was that people kept their old refrigerators. It was great to get them to go out and buy the new refrigerator, but they put the old one in the basement, in the garage or wherever. We actually didn't get that old unit out, and it was the one that was sucking up the energy. The new program—I did indicate that the conservation bureau has the responsibility for getting this up and going—is actually to give people a portion of money to help purchase a new energy-efficient appliance, but we will take away the old appliance, and then we will break it down environmentally correctly and get rid of it. That's the challenge of setting up that industry, because it doesn't exist, actually, in Canada or Ontario, where we can do that. So that was the difference. It had its effectiveness; we need to get it more effective. That's what we're doing, and that has actually been charged to the responsibility of the Ontario Power Authority.

Lighting is the same—I couldn't agree with you more—and that's why we have put that in place as well, both in design—you know, it's fascinating. Markham, for example, has been doing some work around their design in a new development. But if you listen to the astronomers, they will tell you that we tend to light up the sky, as opposed to lighting down the sidewalk, and it's because of the kind of lighting we've used.

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There's some very innovative technology now that produces the light to go down more—it doesn't disperse

it—and so you need fewer light standards. You can put in the LED light standards and they're about 75% more efficient. There are developments that are using these now, and we hope that more will use them.

One of the questions that was raised earlier by Mr. Hampton, and he's dead on, was that we can learn a lot from other jurisdictions. There's no need for us to reinvent the wheel, when we know there are programs and practices and policies that work. Actually, before the election I had contacted Natural Resources Canada through Minister McCallum to say, "How can we bring people together so we can learn from Quebec and Manitoba?"

The wonderful thing about Manitoba is, they were the first government to actually have a sustainability act—far light years beyond us—where they looked at that concept, sustainability, in terms of environment, society and the economy. It was balanced. We certainly can learn a great deal from other jurisdictions. I couldn't agree with you more.

I know that in the north there are huge challenges, and energy is part of that challenge—the rising Canadian dollar, road issues for forestry, fibre costs. There are challenges, without a doubt, and I think it's going to take all of our collective thoughts and wisdom, things that maybe we had done in the past that we could incorporate into today and the future to help these companies.

As much as there is the challenge of losing, there is also the opportunity of creating new jobs. As I said once before, we have our first wind turbine manufacturing plant that has come into Fort Erie, and I'm hoping there will be one soon in the north, because we have such an abundance of wind in the north.

When we look at supply needs, it's interesting that everybody—well, before we get to that, let me talk a little about voltage reduction.

Voltage reduction tests have been done on a regular basis throughout this province for many years, but what happened last year or the year before was that when they did the reduction, they didn't inform the hospitals. So the hospitals said, "Hey, folks, if you're going to do this—and you have to test your system, and we understand it—will you let us know?" For the first time, they actually issued a press release to let people know that this was happening so that they could make up some backup in the event that they needed it. That was the reason for that. But they must test the system on a regular basis. It's part of their design program.

On the supply needs—it's interesting—I know that people tend to focus on a debate from a particular perspective, but I am hoping that the perspective is wider. I'm hoping that people will come with conservation ideas and initiatives that they have. I'm hoping they say, "We need it to be stronger, firmer, when it comes to demand management or shedding loads. These are things we could do."

When it comes to, "Why is there so little wind? Why isn't there more wind? How do we build the transmission lines to capture that run of the river that we know is up in

the north? How do we develop a better way of working with our native community so that we can in fact use the run of the river on native lands, that it's a fair and equitable negotiation that takes place?" I'm hoping that people come forward and don't focus on one particular part, but actually challenge us to go beyond that report, to say that there are things—I mean, 40 megawatts of solar voltaic to 2025 is unconscionable, when you think about it. It's an industry that's in its infancy, no different than the mining industry or oil and gas in Alberta, which had huge subsidies when they first started. Why aren't we thinking, "What can we do to kick-start some of these new initiatives and these new technologies?"

There was a question around what we're doing in technologies, and I'll try and deal with some of those.

A little bit on R&D: Durham has developed a centre of excellence with the University of Ontario Institute of Technology—

Interjection.

Hon. Mrs. Cansfield: That's right, Durham; phenomenal. What they've done is, they've actually brought the industries themselves together with the University of Ontario to say, "What can we do to make a difference in terms of energy technologies, energy efficiency, and dealing with a critical shortage, potentially, of people who need the energy knowledge?" They're one.

The other is the Ontario centres of excellence, which are developing and supporting new technologies. The green wall technology, for example, is now being taken to a smaller level so that it can be put into homes. Two students at the University of Guelph developed that technology, supported, encouraged and promoted through the centre of excellence, as just one. Waterloo University is developing its research and development—it's called the "power place"—and Guelph University as well. So there are things that are happening. Could there be more? Without a doubt, absolutely.

I'd like to speak to the Pembina Institute and the Canadian Environmental Law Association and some of the issues that they've identified. There is, without question, a need to change the building act. So when and if Bill 21 is changed, you're right on, there are things we need to do. The previous government, unfortunately took out the requirement to have your basements insulated. It's time to put that back in because the heat loss is about 28% to 32% on an uninsulated basement, and it's much cheaper to do it before the fact than after the fact.

Mr. Yakabuski: Mind you, they built that place in Durham.

Hon. Mrs. Cansfield: It's a great place; it really is. It's a phenomenal—

Mr. Yakabuski: It's tit for tat.

Hon. Mrs. Cansfield: It's a phenomenal university. There's no question we need to use the most efficient technologies, and we need to find a place where we can challenge those technologies. Universities are one, but certainly our own R&D/innovation ministry should be another, and I agree with that.

Low-income and social housing: Our social housing costs are about \$400 million a year; 40% of that is on

utilities. It's got to change. The reason it's that high is because people built those homes with electric baseboard heating and concrete slabs.

There are innovative practices. Paul Ferguson in Newmarket has a pilot where he's doing three: one where he's putting radiant heating; one where he's actually using what Peterborough is using, and that's collecting and storing electricity; and the other is going to geothermal, to see how we can fuel switch to make a difference for those folks. Because you're right on: They pay disproportionately higher.

Low-income: I've given a directive—actually I was at a meeting yesterday with the providers, asking, “How do we work, how do we make a difference with them?” That program should be rolling out.

We started with 5,000 housing units in 20 communities across this province. It has worked so well that we're now going to expand that right across the province, and it will be done with the LIEN group which involves those two areas.

We have so much we can do; it's exciting. But we are doing some things. Mr. Hampton identified what was happening in Manitoba around applying for a low-cost loan. Actually, if you have electricity as your heating, Hydro One in the north is giving you, with EnerCan, \$3,000 to \$4,000 to retrofit your home in terms of changing your windows and doors, looking at fuel switching, because they recognize the huge impact on those folks. Can we do more? Absolutely. Should we have a program? Without a doubt, and it will be part of that program out of the conservation bureau.

I wanted to speak just a tad about the Toronto situation. In fact, Mr. Yakabuski, if your government had not signed a lease with a developer that gave the Hearn plant to him for 20 years with the two five-year renewals that said no power generation on the site, we may not have been in the challenge that we're in. Having said that, you deal with what you've got, and we will move forward because we have a huge and urgent need in the city of Toronto, and we will deal with it.

I guess the last thing that I'd like to say is that I believe—and I say this sincerely—that the issue of energy efficiency belongs to all of us, regardless of our party and our politics. It's incumbent upon all of us to use everything we can to encourage people to look at how they use energy differently. It's incumbent upon all of us to bring forward your really good ideas that we can move forward on to help make a difference in people's lives.

Mr. Yakabuski: We agree on that.

Hon. Mrs. Cansfield: Absolutely, we do agree on it. You can't see them all, but these are only some of the things that are happening with the local distribution companies in Peterborough, Terrace Bay, the far north, Ottawa, Wawa, all across, looking at smart metering, low-income social housing, things that they know that they can do that makes a difference in their communities. That's why we gave them the \$160 million with which to do it. The first three years they had to put a whole year's

profit back into helping their communities become more conservation educated and more conservation efficient, in addition to their own issues.

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I heard an amazing story of a small, local distribution company in the eastern part of the province. Their transformers were so old that when they had a problem and they went on fire, they just threw water on them. Holy mackerel, this is nuts. We need to be able to upgrade those transmission lines. We need to put in the energy that is required. We need to build. We need to maximize. And we will do it, because it is part of our energy plan.

We have put under 10,000 megawatts in place to the year 2010, and now we're asking, what does the future look like and what is the strategy we need to put in place for 2020? I believe that we all will work together to make it happen because the people of Ontario deserve that. Certainly from our perspective as a government, we have laid the foundation.

You mentioned earlier that, “A report can say anything you choose it to say.” I have to tell you that the report that came out and said that we need 25,000 megawatts of new supply by 2020 was a report commissioned by your government.

The Chair: Mr. Hampton, there are a couple of minutes left, should you wish them.

Mr. Hampton: Yes, I would.

I want to refer to one of the other salient points in Power for the Future. It's a graph which is quite helpful, quite instructive, as to the real priorities of your government. The graph is on page 17. This was written before your government indicated that you wanted to push ahead with \$40 billion in new nuclear. The graph shows that your government has, so far, in the third year of your mandate, put about \$10.5 billion into generation and only \$163 million into conservation and energy efficiency. As they make clear in the report, every time your government spends a dollar on conservation, you're spending \$64 on the supply side. They make the point that the contribution towards energy efficiency and conservation is being measured in pennies by your government while the contribution to energy supply is being measured in billions of dollars.

If you add on the \$40 billion of new nuclear that you and the Premier seem to be very much in favour of, it means that \$50.5 billion will be going to new supply and \$163 million to conservation. Can you tell me, why such an unbalanced approach? Why \$50.5 billion for new supply and only \$163 million for energy conservation?

Hon. Mrs. Cansfield: First of all, you've made a huge assumption. The mixed fuel supply report recommendations have not been made, so I won't comment on that. The other is that we have invited people to come in and invest in Ontario, and \$3 billion has been invested in the renewables alone. That's money that belongs to the private sector, which has come in and created jobs, so it's not our dollars.

I couldn't agree with you more that we do need to do more in terms of conservation and to find those initiatives that fit this community, to produce the greatest value in terms of energy reduction. I really look forward to working with you while you help us get those transmission lines in the north so we can get the water from the far north, from Manitoba and Conawapa, so we can do more with renewable energy because, as you know, if you read the report, there are 600,000 megawatts of wind potential, but 570,000 megawatts are above the 50th parallel.

We have some challenges, and I really look forward to working with you to find ways and means to meet that challenge, to get those turbines where they are in terms of the wind regime, but that means transmission lines. I look forward to working with you to make that happen.

The Chair: Thank you, Minister Cansfield, for your presence and comments, as well as to you, Mr. Yakabuski and Mr. Hampton, for yours.

CANADIAN SOLAR INDUSTRIES ASSOCIATION

The Chair: We'll now invite our first industry presenter, Mr. Rob McMonagle, who's the executive director of the Canadian Solar Industries Association. Mr. McMonagle, if you could please have a seat. I remind you, just in terms of protocol here, you'll have 20 minutes in which to make your opening comments, and any time remaining will be distributed evenly amongst the parties, beginning with the Tories, for any questions and comments. If you might identify yourself formally for the purposes of recording for Hansard, your time begins now.

Mr. Rob McMonagle: Thank you very much. My name is Rob McMonagle. I'm the executive director of the Canadian Solar Industries Association. I've got a presentation; I'm hoping all of you have it. The title of the presentation is, Bill 21: Improving Opportunities for Solar National Leadership for Ontario.

I normally begin presentations with a little bit of an introduction of where we stand both in Canada and internationally, and my first slide basically deals with the solar industry in Canada. We are a small industry. We employ approximately 1,200 people across Canada. Compare that to Germany, which now employs 20,000 in the industry. The solar industry is the fastest-growing industry in all of Germany, is generating more jobs than any other industry in Germany, including the steel industry.

In Ontario, we are already some leading firms that are world leaders. We have a company in Cambridge called Spheral Solar Power, which is a division of ATS. It's a world-leading PV manufacturer. It is an innovative technology that will lead the world into the solar future. We have firms that manufacture solar water heaters; Enerworks in London is an example. In Toronto, we have the largest manufacturer in the world of solar air systems. It has 60% of the market around the world. However,

there is no market for our products in Canada at the present time.

We do, though, have the solar resource. This is one of the myths we deal with in Canada. We are a northern nation, but "northern" doesn't relate to lack of sunshine; it relates to the temperature. In the summertime, when we're starting to peak in our energy requirements because of air conditioning, we actually have a better solar resource than Miami. That's briefly where we stand around the world.

In PV, we're 13th out of 20 reporting nations, according to the IEA, with only 26% of the international average per capita. Solar thermal: We're 16th out of 26 reporting nations, with only 23% of the international average.

Now we get into the heart of my presentation: energy efficiency and solar energy. Solar energy is the only energy source that's in the hands of the energy consumer. You can't go out and buy a nuclear power plant. You can, however, go out and do something about generating your own electricity by the use of solar.

Anyone in the solar industry will tell you that you can only go so far with energy efficiency. You can use all sorts of energy conservation methods to reduce your hot water needs, but you still need hot water at the end of the day. Solar can be that provider of energy. It's also the next step when an individual looks at, once they've done all the energy conservation, what can they do? They have to turn to solar. Anyone in the industry will also tell you that as energy efficiency improves, the cost of going solar goes down.

Solar energy companies are the greatest supporters of energy efficiency because it brings our costs to the consumer down significantly. Conservation just isn't about turning out the lights; it's about integrating a whole new concept about how we use and consider energy.

One of the things we also deal with is, are we a conservation method or are we an energy generation method? You have to remember that solar is usually on the customer side of the meter. So from the utility viewpoint, they don't see energy generation. They're seeing it as a negative load. It's reducing the consumption of that person.

We tend, however, unfortunately, to get passed around between who looks after the solar issues. Some view us as a generating source; others view us as conservation. This runs into problems because then we don't deal with one individual or branch of the government. For example, in the Ontario Power Authority, solar PV is in the generation division while solar hot water is in the conservation office; however, both technologies are dealing with the same issues.

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The biggest challenge for solar is the way we account for the cost of solar technologies, because we're selling it to the homeowner in most cases, or the small business owner. They look at energy conservation as payback, at how long it is going to take to save that investment. However, an energy generator looks on it as a return on investment or life cycle cost.

To illustrate this issue, solar hot water has a seven- to 10-year payback. For the average consumer, it's too long; they expect a payback of under three years. But if you were an investor investing in a power generation plant, that's a 10% to 15% return on investment, which is not a bad investment considering how secure solar technologies are. If you look at it from the cost of the energy it produces, it's five cents per kilowatt hour. And you've got to remember, that's compared to the customer's cost of electricity, which in Ontario right now is about 11 cents per kilowatt hour.

So we've got a disadvantage when we're competing with other technologies. In other countries, that has been acknowledged by accounting of costs through either long-term, low-interest loans, leasing programs offered by utilities or, in the case of photovoltaics, what are called standard offer contracts. We believe that Ontario may be leading the way in Canada on all these issues.

The opportunity we have with Bill 21 is that it removes barriers, and it can remove the barriers for solar. For example—and I'll give some details a little bit later—Ontario homeowners don't have the right to the sunlight that's falling on their space, on their roofs. There are also covenants in place and bylaws that prevent items from being put on roofs and in the yard. For example, one of the basic solar collectors is the outdoor clothes-dryer line. It is known that there are bylaws that prevent that most basic of solar collectors. Further, there are interpretations of bylaws and building codes that prevent the use of solar. For example, Ottawa, until recently, prevented the use of solar water heaters in that city. Bill 21, if done properly with some of the measures, can increase the value of solar-produced energy to the purchaser. It also stimulates the conservation culture, which increases the likelihood that people will go for solar.

As an example, some of the barriers that Bill 21 could help us resolve—solar access is a typical situation. Right now we don't have the ability to guarantee the individual's right to the sunlight that's falling on their roof that's powering their solar collectors. We are one of only a few countries in the world that don't have that right.

I want to deal briefly with smart metering, which Bill 21 addresses. We believe that has a significant opportunity if it's done correctly. We do have questions at the present time, though, about whether smart metering will benefit solar technologies. What is needed is the integration of solar metering functions into the specifications of the smart meters. I've been told by various manufacturers that this is a simple change of the chip. It can significantly reduce the cost to the homeowner for going solar. It can stimulate greater energy consumption.

The way we would suggest that smart metering be integrated is with the concept of net metering, which Ontario now has in place. Net metering basically allows individuals to produce their own electricity. Any excess is then fed into the grid and banked. You don't get paid for that, but you can use that at a later date; it effectively reduces your bill. However, what we need is integration of time-of-day billing with net metering. This will allow

people to get paid the premium value for their solar when the grid requires it. It's going to increase the value for the solar electricity, and not only that, it stimulates the turning off of appliances during peak periods of time because people want that extra value of feeding that power in.

Let me give you an example: Last July 18, the cost of producing electricity in Ontario reached almost 40 cents per kilowatt hour. With time-of-day billing, there's going to be a higher premium associated with power purchased during the middle of the day. We feel that then there should be higher value associated to the solar that's fed in during that period of time. You can see that the solar radiation falls exactly when you're peaking during the daytime. Solar's peak power capacity actually increases as the demand for power increases.

I'll deal with smart metering and standard offer contracts. Standard offer contracts basically pay homeowners, farmers and small businesses to generate electricity over a contracted period. We like the concept and thoroughly support it. It can be improved by looking at what is being done around the world: integrating standard offer contracts with smart meters into a concept which is called "net billing." What happens is that in your electrical bill you have one line that charges you for how much you use in your house and you have another line which pays you for how much you've produced and put into the grid. Just think how many people would be stimulated, knowing that they can get a cheque at the end of each month, if they could only get that electricity consumption down below what they're generating. It has a tremendous impact on energy conservation if it's integrated this way.

There has been a bit of confusion recently about what is net metering and what are standard offer contracts. Ontario is fortunate because we're going to have both in place and the two mechanisms complement each other. It's an issue that has not yet been addressed in other nations that are more forward of us and have offered standard offer contracts for over 20 years now. Net metering is a connection process. It ensures the right to connect your home generator to the grid. Standard offer contracts are only for a relatively short period of time, typically 20 years. But you've got to remember that solar technologies will last you 40 years at least. So what happens after the standard offer contract finishes? If there's not a renewal clause, technically speaking, you would have to take your system off-line. Because Ontario has net metering in place, net metering gives assurances to those customers that they will always have the right to connect their solar panels to the grid.

So where do we go in the future? With solar technologies, the potential is in homes. There's a concept right now called "net zero energy," which is basically an initiative being led by the federal government to reduce the energy consumption in new houses down to virtually zero. The federal government recently announced a program which will see 1,500 homes at net zero energy in Canada within the next four or five years. The long-term target announced by the federal government is that

all new homes by 2030 will be built to this new standard. We feel that by then there will over half a million homes in Ontario with over 1,200 megawatts of PV generating power. Integrating standard offer contracts and integrating net metering into smart metering helps that process.

One of the issues we're talking about now in the papers is Toronto. We've got a serious energy issue coming. How do we get the energy into Toronto? Do we build more large power plants inside Toronto? Do we build more transmission lines? Think about it. Part of the issue when it comes to Toronto is the air conditioning loads. We're peaking now during the summertime, during hot, sunny days. Sunny days and solar? There's a relationship there. Solar PV has a potential of over 1,300 megawatts on Toronto houses. That can significantly reduce the need for other generation. Solar hot water heaters can replace 65% of all the electric hot water heaters in Toronto, providing 100% of the load requirements.

Just to show you that we're not talking a lot of hot air—or hot water—look at what's happening with solar hot water sales in Austria. Austria has less of a population than Ontario—only eight million people—but already Austria has almost a quarter of a million solar domestic hot water systems. One out of every seven homes in Austria already has a solar hot water heater. It has a poorer solar resource than Toronto. It can be done.

Recently, OPA has announced their power supply mix. They project 40 megawatts of PV by 2025. That's a significant improvement from the 0.1 megawatts we currently have in Ontario, but we can do a lot better. The 40 megawatts projection by 2025 equates to only six weeks of installation in Germany. Think of that: a 20-year projection for Ontario to do what Germany is now doing in six weeks. If a program of standard offer contracts is designed properly for Ontario citizens, then we will not have 40 megawatts by 2025; we will have over 1,000 megawatts.

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Bill 21 is opening the door for the potential for solar technologies and other renewable energy technologies. Of all the technologies, there's a very strong link between conservation and solar energy. In fact, it's often viewed the same way. Bill 21 is promoting conservation by removing barriers and restrictions. By removing those barriers, solar's potential is improved significantly.

We also find that solar is the sizzle that sells conservation efforts. Not very many people get excited about putting low-flow shower heads on their showers, but I'll tell you that they're excited when they're producing their own hot water. Net metering, standard offer contracts and net zero energy can help develop that culture of conservation in Ontario. Thank you.

The Chair: Thank you very much, Mr. McMonagle. We'll have about five minutes or so, distributed evenly, so reasonably efficient Mr. Yakabuski.

Mr. Yakabuski: Thank you very much for joining us today. It was an interesting submission; very informative. I met this past Monday with—you may know them—the

Ottawa River Institute. I met with Lynn Jones, Ole Hendrickson and Ken Birkett.

Mr. McMonagle: Yes.

Mr. Yakabuski: Their pitch to me was not unlike your own. They're very positive about the potentials of solar power. I certainly agree that unless we change the way of thinking, we're not going to make any advancements in solar power. We have to move away from looking at all the potential negatives to looking at some of the potential positives that are there.

One of my questions was going to be the numbers, and you've got a number there of 1,200 megawatts by 2030.

Mr. McMonagle: And that's just one initiative. We feel that overall we're actually at about 3,000 megawatts potential.

Mr. Yakabuski: One thing that I do have to ask, because it was something that I discussed with the aforementioned threesome, is, have you people an estimate of the cost of subsidy and/or public involvement with regard to low-interest loans or whatever that it would take to make that happen?

Mr. McMonagle: Different solar technologies have different costs associated with them. If we're dealing with solar domestic hot water, for example, it requires virtually no subsidy over the life of the system. What it needs is the financing mechanism. We don't need, for example, a 25% or 50% subsidy because a subsidy up front is not going to help solar hot water; it's too expensive. For a \$4,000 system, \$2,000 off still isn't going to stimulate the homeowner. But by providing the tools, which are financing or leasing, it also makes it economical. We just don't have that resource to get low-interest loans.

The Chair: We'll now move to the government side, Mr. Leal and then Mr. Delaney, two and a half minutes.

Mr. Jeff Leal (Peterborough): I've just got a quick observation; Mr. Delaney wants to ask some questions. I had an opportunity six weeks ago to tour Spheral Solar Power in Waterloo, an interesting company interested in standard offer contracts. They see a great future under this bill to increase their employment base significantly and develop even further new technology in this field.

Mr. Delaney wants to ask some questions.

Mr. Delaney: I have a few technical questions for you. Let's see if we can get through them.

Mr. McMonagle: I love techie questions.

Mr. Delaney: Which do you see to be the predominant use of solar energy in the next, say, 10 to 20 years? Would that be low-temperature heat applications or photovoltaics?

Mr. McMonagle: Both.

Mr. Delaney: No, the predominant one.

Mr. McMonagle: You can't choose a winner.

Mr. Delaney: How would you see the split, then?

Mr. McMonagle: Okay, 50-50.

Mr. Delaney: What would you estimate to be the collector area in, say, square meters that the incident flux of solar radiation can be recovered from in the GTA?

Mr. McMonagle: That's a real techie question. To give you an example, solar domestic hot water accounts for approximately 25% of the energy load of a house. You would need two solar reflectors, each being—I'm going to put it in imperial units because I'm fairly old—about three feet by eight feet. So you're looking at about 50 square feet to provide 25% of hot water requirements. If you're dealing with photovoltaics, it's higher, but we figure that approximately 67% of houses in Toronto have the solar resource to provide close to 75% of their electrical energy needs using photovoltaics.

Mr. Delaney: Perhaps you could aggregate some of this data and supply it to the clerk to distribute to the committee.

Mr. McMonagle: We do actually have a full report on that.

Mr. Delaney: What is the flux in watts per square meter of solar radiation at noon at this latitude?

Mr. McMonagle: It actually doesn't vary anywhere in the world. It's about 1,000 watts per square meter if the solar panels are perpendicular to the sun.

Mr. Delaney: What is the average capacity factor, referring to photovoltaics, of today's generation of photovoltaic energy collectors?

Mr. McMonagle: If you're looking at 24 hours a day, 365 days a year, it works out to be about 14% or 15%. If you look, however, at when the energy demand is needed—

Mr. Delaney: Fourteen per cent to 15% is the number I was looking for.

The Chair: Thank you, Mr. McMonagle, on behalf of the Canadian Solar Industries Association.

DCS DAYLIGHT CLEANING SYSTEMS INC.

The Chair: I'd now like to invite our next presenter, Mr. Randy Burke, president and CEO of DCS Daylight Cleaning Systems. Mr. Burke, as you've heard, we have 20 minutes in which to hear your presentation and any time remaining will be distributed evenly among the parties afterward. Please begin.

Mr. Randy Burke: Thank you. Good morning, Chairman Qaadri and standing committee members. Thank you for allowing me to address you this morning. My name is Randy Burke. I'm president of DCS Daylight Cleaning Systems. We're custodial consultants. I'm going to try and speak around 10 minutes, because I'm very interested in any comments or questions you may have.

I'm an active board member of BOMA, Building Owners' and Managers' Association, in the cities of Toronto and Calgary respectively. I'm really looking forward to offering our perspective and support for Bill 21, specifically schedule A, sections 3, 4 and 7, and to support the amendments to schedule D of the energy conservation act of 2005.

Under the leadership of Premier McGuinty and the progressive initiatives currently being researched and employed under the strong management of Minister

Cansfield and the conservation action team, we're all too aware that a top priority of this government is to foster programs and measures that allow for Ontarians to participate with government in this commitment for Ontario to build a culture of conserving energy. Furthermore, I'd like to see Ontario be truly a leader in Canada, and in fact North America, in this energy conservation.

This government has declared a commitment to Ontarians to reduce its own demand for electrical usage in government-owned buildings by 10% no later than the year 2007. We salute this action and fully endorse best means and practices working to achieve this goal of enhancing operations and performance of government-owned buildings in the province of Ontario. The process I'm here to speak on today will achieve approximately 68% of the government's overall 10% electricity reduction goal.

We also recognize that this is only part of the solution. Citizens and government as a collective force must work in co-operation in fostering sustainable solutions to the ever-growing international crisis of conserving energy.

Schedule A, section 3, addresses "the removal of barriers to and to promote opportunities for energy conservation to, by regulation, designate goods, services and technologies."

Schedule A, section 4, "authorizes the Lieutenant Governor in Council ... to require public agencies to establish energy conservation plans."

Schedule A, section 7, "authorizes the Minister of Energy to enter into agreements to promote energy conservation."

The energy minister, the Honourable Donna Cansfield, has repeatedly committed to promoting a conservation culture across this province. In support of her commitment, the ministry has set targets for the province to reduce the peak electricity demand in Ontario by 5% by the year 2007, and the Ontario government's own electrical reduction consumption by 10% over the same period.

Presently under consideration and in trial within the auspices of the Ontario Realty Corp. and SNC-Lavalin ProFac, there is in place a progressive and innovative building operations system which, very simply put, has successfully converted traditional night-time cleaning to a daytime cleaning model. This system was explicitly formulated to address building security operations, cleaning concerns, our environment by reducing greenhouse gas emissions and savings in energy by reducing electrical consumption in each building that the system goes in by a conservative estimate of 5% during a high-demand load time.

1100

This DCS system has been in process for the past 14 months in two buildings owned by the province of Ontario and has proven to be highly successful; there are many others in Canada. In support, I'd like to walk you through a couple of the appendices that I have. If I could start with the one titled, "Monthly electrical consumption (2004)," this is an electrical consultant's data—I didn't

even know they existed until I saw this report—by Solution 105. There are three lines of data: There's the actual load data, which is the red line; the budget data, which is the yellow line; and the weather-adjusted data, which is the blue line.

You can see during the first two months of reporting, January and February, they're quite close. What happened on March 1 is that the building was converted to a daylight cleaning system. The following three months of data show a reduction of 5.8% in the actual load. This building is quite new. It was built in 2000, it has T8 lighting, electronic ballasts and hourly light sweeps—so it's a fairly efficient building.

There is more data coming. We have three buildings converting for GWL Realty Advisors in Vancouver. BC Hydro has jumped on board; they're doing some energy monitoring for us.

The next sheet I'd like to draw your attention to is, "Small things add up." We had an electrical engineer design a program for us so that we can estimate energy savings. This is a summation of savings that the Ontario Realty Commission's buildings could save. If you look at an overall inventory of approximately 30 million square feet and you take off a third of that as unsuitable—too small, essentially; smaller buildings—and then you say you're going to darken 80%—again, our system shows that this does in fact work—now you're coming out with 16 million square feet affected. Times two watts per square foot, we go down 32 million watts. Divide by the kilowatt hours and you end up with five hours per day darkened, because that's what happens in cleaning: People go home and the cleaners show up at a building, and they need the lights on. So our system takes the cleaners and puts them in the daytime and we darken buildings at approximately 6 o'clock, 5 o'clock. Five hours per day darkened quickly adds up, at 22 service days per month, to 3.52 megawatts per month, which in fact, on an annual basis, is 42 megawatts.

Straight dollar savings: We used 6.6 cents per kilowatt hour. That's when this chart was done. I did some more research. Right now, the Ontario Realty Commission is paying 8.3 cents per kilowatt hour. Needless to say, energy costs are rising. So this figure of \$2.8 million is in fact closer to \$3.4 million a year in plain savings.

The next slide is the same thing, "Small things add up," but we looked at the Toronto office tower market. At 150 million square feet of office space, using the same formulas, saying we're darkening 80%, you're up to 317 megawatts a year just in the GTA. That \$20-million figure is now about \$24 million. We feel all of these estimates are very conservative.

The last slide that I have was done through some survey data. This is actually one of the government buildings, 880 Bay Street, where we have one of our models running. "How do people like it?" is essentially what we said. "Would you recommend this system elsewhere?" Eighty-four per cent said yes. It was interesting, we had 6% that said no. We identified a training building, actually, with the cleaners. One of the older cleaners was

asking people to get out of the way. That's not our system. So we went and corrected that. We have similar data from other buildings. Morguard, in town, is doing a lot of them. They're very happy, and they're expanding the program.

Pursuant to section 3 and section 7 of the act—"the removal of barriers and to promote opportunities for energy conservation to ... by regulation, designate goods, services and technologies"—I submit to the standing committee on justice policy today that a daylight cleaning process be put forward as an opportunity for the Ministry of Energy to engage in the promotion of the transformation of an essential service, that of cleaning, to a daytime model in Ontario government-owned buildings.

Pursuant to schedule A, "Section 7 of the act authorizes the Minister of Energy to enter into agreements to promote energy conservation," I submit that the Minister of Energy investigate ways and means of entering into supportive measures, including incentives and/or agreements with privately held commercial real estate companies in the province of Ontario, to engage in a daylight cleaning model.

We as a society are faced with great challenges specific to energy conservation. We've become actively engaged in seeking out actions and solutions to support sustainable ventures in addressing how we use electricity and how we can participate in meaningful ways to conserve it.

I firmly believe that once a daylight cleaning system is in place, it will aid in facilitating the government of Ontario in delivering on its promise by reducing its own electrical consumption in government-owned buildings, thereby positioning it as not only an early adopter of an inventive system, but also as a leader in energy conservation, not only in the province of Ontario, but in North America. Canada is light years ahead of a lot of other places with this particular process.

It is going to happen. There's a shortage of part-time labour at night. There is a requirement for socially responsible contracting. These cleaners now get full-time hours, working Monday to Friday, rather than part-time at night, where they have to have daycare for their kids. They get higher wage rates. I'm 20 years in the cleaning business, and I've had a lot of friends, of course, who were cleaners—wonderful people, new Canadians. We've actually started a foundation; 10% of our daylight cleaning revenues go into a foundation to educate cleaners' children. We're starting to get donations from cleaning suppliers and equipment suppliers and such.

There's a great section of—some people call them the "great unwashed" or whatever, but there's a group of people—it's a very huge industry; in Canada, we're talking about \$8 billion in contract cleaning—that go out at night and do this work. A lot of people call them the "ghosts at night" and "thieves" and whatever. It's because they don't see the people they serve. So this brings this whole service into contact with the people they serve. It just is a much better model socially. In fact,

they provide better service because now they can interact, and that's proven.

I'm very interested in questions if you have any. I really did appreciate the opportunity to meet you today.

The Chair: Thank you very much, Mr. Burke. We have about eight minutes to distribute evenly. We'll begin with Mr. Hampton.

Mr. Hampton: What I think I hear you saying is that the model you've put forward, if it were adopted in a more widespread fashion, could lead to significant savings in terms of electricity usage.

Mr. Burke: Correct.

Mr. Hampton: Are you aware of this model being used outside of Canada to a great degree?

Mr. Burke: Yes, it is. There's very little of it. There's a saying in business, "Culture eats strategy for breakfast." The culture of night-time cleaning has been going on for 30 years. So part of our challenge is to get this culture accepted. For instance, the EPA building—it's a million-square-foot building in Sacramento, California—has been day-cleaned since 2000. The property manager has said that he would not be able to go back to night-cleaning if he tried, his tenants like it so much. And he's saving over \$100,000 a year in electricity.

It's very early. Again, we're custodial consultants. We seized on this and started developing a model. Our first building converted January 2, 2003. We now have 15 buildings; none of them has gone backwards. We have another 11 in transition, which should go through transition in the next, I'd say, four to five months. So it's picking up speed; it's just slow.

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Mr. Hampton: What about in Europe, some of the European countries?

Mr. Burke: They're ahead of us there. In Scandinavian countries, most of them are day-cleaned. That's been happening. I haven't done as much research as I need to, but I do know that in Sweden, for instance, most office buildings are day-cleaned.

Mr. Hampton: I would think that the more northerly your latitude, and the more hours of darkness that you have, particularly in the fall and winter months, the greater the opportunity for significant savings.

Mr. Burke: Absolutely.

Mr. Hampton: This is just fairly practical stuff. You don't have to engage in any ethereal science to get this done.

Mr. Burke: No. The actual cost of cleaning is almost the same because you get more efficient. You vacuum on Saturday, not when people are right there. There's a whole system around it so that you don't disturb the tenants. It's well accepted.

The Chair: Thank you, Mr. Hampton. I'll cut it there and now move to the government side. Mr. Leal, you have about two and a half minutes.

Mr. Leal: I have a quick question for you, Mr. Burke, and then I'll turn it over to Mr. Delaney. Have you done any analysis on municipalities in Ontario?

Mr. Burke: Not as yet. We've worked with SNC-Lavalin ProFac, mostly here in Ontario. We also work with the BOMA members. Oxford Properties is starting to roll it out; again, slowly, but they are.

Mr. Leal: I also like your concern for personal safety. Traditionally, many females work at night. They're hard-working people. I'm in the Hearst Block. They're there at 8 and 9 o'clock at night. Personal protection: I salute you for that. I think you're going in the right direction.

Mr. Burke: Thank you, sir.

Mr. Delaney: I have a few clarification questions. Do your staff use vacuum cleaners or any other cleaning device that runs on electricity during the day?

Mr. Burke: Yes, they do. Instead of five days a week using those vacuums, they use them one day a week, which is on Saturday. They use non-motorized carpet sweepers to pick up spills Monday to Friday.

Mr. Delaney: What equipment that is in use during the day by your staff makes noise?

Mr. Burke: I should clarify: These aren't our staff. We're not contractors. We actually don't do the cleaning. We are transition managers for contractors, just to clarify that. Sorry, your question?

Mr. Delaney: What equipment in use by day cleaners makes noise?

Mr. Burke: Almost none. If you can imagine, in a theatre, the little whirring sound of the brush against the carpet, as it's non-motorized. That's about it. They use battery-operated walk-behind vacuums. You can hardly hear them.

Mr. Delaney: To what extent do people who work in the offices during the time when they're being day-cleaned need to leave their workspaces, even briefly, for cleaning to take place?

Mr. Burke: Never, because there is a basic and a thorough housekeeping process. Basic cleaning happens while the individual is there. There is a bubble around the individual and you don't go there, but twice a month you do a thorough cleaning when the individual is not there. They can either request that at a certain time or it happens very naturally. As they show up, the tenant is not there, and they think, "It's been a week and a half, two weeks, I'm going to do a thorough cleaning."

Mr. Delaney: How much more per hour are day cleaners paid compared to night cleaners?

Mr. Burke: About 10% to 15%. That's in a non-union market. In a unionized market, they're pretty well paid the same because they've got nice benefit packages and such. Sometimes there's a slight premium called a "daylight cleaner," depending on the union agreement. In a non-union environment, you do have to pay slightly more, but it's more than made up for—

The Chair: Thank you, Mr. Burke. We'll now move to the Tory side. Mr. Yakabuski, you have about two and a half minutes.

Mr. Yakabuski: Thank you for your submission, Mr. Burke. I apologize. I missed some of it. I had to leave for a moment.

Mr. Burke: That's okay.

Mr. Yakabuski: You have some figures on the energy savings that we could have, for example, in the Ontario Realty Corp., which of course is the government. I would make the observation that apparently the library in Ottawa does not have a daylight cleaning service. I don't know if you know what was going on there last week.

Mr. Burke: Actually, I missed that.

Mr. Yakabuski: There was a little mishap in the washroom and a councillor is in trouble with the union because of it.

It seems to me, again, that we just have to alter our way of thinking a little bit, similar to the gentleman Rob, who was here before, with regard to thinking about solar. We get locked into a position that "this is when we do things." "Why do we do it?" "Well, that's the way we always do it." If there are some energy savings to be made, I think we should certainly be taking a hard look at that, providing we maintain the same service and we don't actually put a bigger burden on our electricity usage during the peak hours. I don't know if you've dealt with that in your submission—

Mr. Burke: Yes, we have.

Mr. Yakabuski: I apologize; I missed a portion of it. Those are some items of concern, but other than that, it seems like pretty elementary stuff here. Why wouldn't we take a look at that? From the point of view of life enhancement, people would prefer to be working during the day rather than late at night. I think it's better for them, better for their families and everything else. Thank you.

The Chair: Thank you, Mr. Burke, for your presentation on behalf of DCS Daylight Cleaning Systems.

BELL CANADA

CAPGEMINI CANADA INC.

HEWLETT-PACKARD (CANADA) CO.

The Chair: I now invite our next presenter, Mr. Renato Discenza, representing Bell Canada, Capgemini and Hewlett-Packard. Gentlemen, as you speak, if you might introduce yourselves to Hansard for the purposes of recording. As you've seen in terms of protocol here, 20 minutes for the initial presentation, and the time remaining distributed evenly among the parties. Please begin.

Mr. Renato Discenza: Thank you, Mr. Chairman, and thank you, members. I'm Renato Discenza. On my right is Mr. Perry Stoneman from Capgemini, and on my left is Mr. Francois Labrie from HP. All of us are executives in the technology industry.

First, let me say that we recognize and appreciate the energy challenge before the government of Ontario; indeed, the people of Ontario. We believe that Bill 21 will provide the guidance on how to assist our province in finding solutions to deliver cleaner energy, more reliable and reasonably competitively priced energy. But I'm really particularly delighted by the name of the act: the

Energy Conservation Leadership Act. I think that leadership is a very important part of this bill.

I would like to comment on the technological aspects of this bill. Bell Canada has teamed with Capgemini and HP to collectively support the ministry in their smart meter initiative in Bill 21. The Bell, Cap and HP perspective is unique. It's based on a mix of the international and domestic experience of our three companies. I will speak on behalf of Cap and HP; however, as the SVP responsible for selling to some of the largest corporations in Ontario and, indeed, Canada, I feel I have also a business perspective. Representing a company with a large consumer base, I think I have a sense of the consumer experience as well.

At the end of the day, Bill 21 is about the introduction of smart meters, the demand-side management, but it's really about one thing: changing societal behaviours. It's developing a culture of conservation. It's about changing the way we go about our daily lives and changing the way we think about energy and electricity.

Now, what I am about to say may sound very strange coming from a technology executive, but I'll say it anyway: The success of smart metering and conservation will not come from the selection of a particular technology. In fact, substantially all the technology that will enable smart metering is generally available today. It is about changing consumer behaviour, and that is where we know we can speak from experience. Each of our companies has deep experience in helping consumers and business change the way they work and live through the use of technology. This is very important. It's how people process timely and relevant information to make decisions.

HP is at the forefront of changing the way people interact with technologies on a daily basis, whether it's with hand-held technology or e-services at financial institutions. Capgemini helps large enterprises globally develop different ways to interact and interface with their clients and customers and shift them to electronic channels. Bell Canada, through 126 years of tumultuous changes and shifts in technologies, has helped people and systems link and communicate with a plethora of technology. Whether it's as simple as just teaching people about 10-digit dialling, showing them how to use new digital media, or indeed, introducing a whole generation to the Internet, we've helped business, and we understand the importance of education, feedback and support in helping people adapt to technology.

So the challenge here, while important technically, is about social marketing. The device that will deliver change in behaviour in Ontario won't be TV ads, sophisticated campaigns or even, respectfully, political speeches, though all of those things will help. It's about the information on a day-to-day basis on how people use their resources.

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Smart meters lead to smart consumers. When consumers have intelligence on their energy consumption, they actually become an active part of that solution.

When you put intelligent new consumers in the middle of a real-time, closed-loop system driven by the dynamics of an energy market, you have the potential for an automated, self-regulating ecosystem that achieves the four major key objectives of the province, and that leads me to the technology and the team we assembled. We're not just excited about the opportunity in front of us. We're excited about the opportunity that lies beyond and what could be done to leverage investment in this technology.

To be successful, smart metering will require innovation and technology, but more importantly, innovation on how to create awareness, education, drive change and change social behaviour. When implemented, smart meters will create a new value for Ontario through reduced fixed-plant investments, create new commercial models and make Ontario a world leader in products and services.

We believe that innovative choices are available to the government for governance, ownership and regulatory choices that will directly impact consumers. So let me give you a few thoughts on what we would like to see presented in the bill and the program: a clear and consistent vision, objective and focus—a focus on education and awareness for average Ontarians to ensure they support the initiative and are willing to change their behaviour to create a conservation culture.

In fact, we have started working on the concept of a “conservation collaboratory” that would not only allow the technical standards for devices in the systems to be tested and to ensure interoperability, but also would study and learn how information is being used to change the behaviour, what modes of information work best for whom, how we change our approach in real time, and involve companies like ourselves, but also government policy specialists, marketing experts, academics in marketing, behavioural science, advertising, education and other areas that can contribute on how to accelerate a shift in culture and values and views on energy.

We cannot allow only time to work. We need to accelerate the shift towards a conservation culture. We see a world-class conservation collaboratory founded on solid principles of research and development and rapid commercialization of technology as an actual engine to make sure Ontarians' end goals are achieved. We need a sufficiently robust set of passive incentives and active actions to reduce the overall energy demand and change the demand curve. We need to encourage collaboration and partnering among all stakeholders, private and public. We need an economic policy that incents private sectors to participate.

We are familiar with the government regulatory environments both at the provincial and federal levels dealing with the OEB, and we believe that any initiative must remain within the government's control, but it must balance the requirements of the private sector. Creating an economic and policy environment encourages the private sector to participate in—indeed, inject capital into—the solution. The government must ensure that the risks and rewards of this project are in the public's

interests, but similarly it has to balance the risks and rewards for the private sector participants. They must be in balance. Unreasonable liabilities that will produce too much risk for publicly traded firms may not yield the participation that is required for the solution.

The government has an opportunity to innovate around governance and ownership models to drive maximum attention and participation from interested and committed private sector participants. As a service provider that deals daily with private consumer information and communications traffic, we would look to the government to provide clear policies and guidance on how the government wants this information managed and controlled and as to the liabilities associated with this information management. Clear direction early in the process and any outstanding issues related to privacy and access to confidential information must be there. The project cannot be stalled somewhere down the road because appropriate regulatory and technology security features are not built into the solutions and the program.

We have to leverage investments that already exist, both now and those that will come in the future. We have to take advantage of the infrastructure to speed time to market and reduce the cost. Bell Canada and indeed other service providers in my industry have investments in telecom networks. We need to leverage the existing network technologies like the PSTN, DSL network, the wireless 1X network, WIMAX, Inukshuk and EVDO, and a plethora of other technologies and networks that exist today. We need to force key market participants to co-operate on standards and infrastructure sharing, and we need—this is important—to avoid specific technology commitments.

We have to be what we call “agnostic” to technology, and avoid reliance on proprietary or vendor-specific technologies. We need to ensure that we have the ability to get the latest and greatest technology at the lowest available cost. In thinking globally, we need to make sure this technology is deployed beyond our jurisdiction. That will deliver the cost, the research and the effectiveness that we need. So we have to avoid being stuck with one solution.

In conclusion, I want to leave this committee with two points. This is important legislation, but it's really only the first step in what will be a long process of changing behaviour in Ontario and creating a conservation culture. Involving your partners in that process early and often will enable the government to benefit from our expertise and our experience, and we, as a private sector industry—all of us—are willing to take advantage of it.

Secondly, the challenge here is complex, but it is important that we don't make it complicated. Complex technologies and systems are elegant and interact smoothly. They definitely require a deep and expert understanding of individual components: how these components interact and how users become proficient at using them for their end results. Complex systems have architectures and design that have unifying principles and are adaptable.

Complicated systems emphasize the superiority of individual components, not the elegance of the inter-

action. They are based on the principle that if you select the best of individual components and link them together, everybody should have a wonderful outcome. They do not focus on making the experience intuitive but believe that the end-user should become an expert at using this complicated system. We can tell you from our experience in dealing with consumers that that simply does not work.

Thus, the goal is to make the tools and processes for consumers simple without being simplistic. This is how we think about them: Simplistic has a level of naïveté to it. It underestimates the challenge. In this case, viewing the ability to bring technology forward as the only enabler without having an acute understanding of how thousands—and millions of people, indeed—adapt processes of technologies and act upon information, without that clear, consumer-centric, deep understanding of these behaviours and the ability to change them real-time—that's simplistic. Making it simple is ensuring that the outcome is driven by the purpose: the need to change the way we think, use and feel—yes, feel—about consuming energy and natural resources.

So by ensuring that both public and private resources are clearly focused on the outcome, not just the tools, Ontarians will make it happen. Bill 21 will be the impetus and the call to action. Ontario, both the private and public sector, along with all our citizens, will show that leadership, and our companies are prepared to engage in this extended scope of process.

Thank you for your time and attention. We're happy to answer questions.

The Chair: Thank you, gentlemen, for the testimony. We'll begin with the government side.

Mr. Leal: Mr. Disenza and your colleagues, we want to thank you for a very articulate and informed presentation this morning. Just a couple of questions: You think that changing consumer attitude is key. It took about a decade for us to change attitude in terms of recycling and environmental stewardship. I think we have to move that kind of attitude, only at a much quicker pace. I'll leave that with you. George Bush, in his State of the Union address, said that we're addicted to oil and we have to make a switch on that.

Secondly, on Bill 21, you believe we're going in the right direction and providing a positive framework?

Mr. Disenza: Absolutely. The leadership aspect of the bill is absolutely paramount. I believe that what we have to do is start taking advantage of Ontario's leadership role today. We know how to change how people use it. Canadians were amongst the first in the world to start adapting to electronic channels. Indeed, today we can file our income tax electronically, and we do it in droves. We go to ABMs. We use more debit than anybody else in the world. We're comfortable with technology.

It is our firm belief that using the private sector's experience—we've introduced a lot of technology. Think about the days when you used to get a paper cheque and you had to explain how you had to get to the bank before 4 o'clock. Today we don't even think about it. The key is

that our people have studied how people learn about technology. The conservation collaboratory we think is an important enabler. Again, we have the technology; we all do. It's about how we can actually put the cultural aspects and the academic aspects together. So we think time will fix it if you have the technology, but we don't have a generation to get on recycling. We don't have a generation like with seat belts. Now my kids won't get in a car without a seat belt, but how long has it taken? We think we have to use this technological, research-based approach to accelerate the cultural change. We'll provide the technology and the understanding of how consumers use it. Together I think we can design an acceleration of what could be a natural process.

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Mr. Delaney: Two very short questions, following up on a statement you made earlier on business risk: Could you describe to me just how much risk and in what areas would Bell Canada be willing to undertake in the implementation of smart metering as described in Bill 21?

Mr. Disenza: Not just Bell Canada but our consortium of—we're business people and we understand that, to take advantage of some new technology, you have to inject capital. We are prepared to leverage our existing networks. Indeed, every day we take risks. We put capital out there. We have to be sure of how the marketplace will adapt, or else that capital is stranded. We're prepared to leverage our networks, our expertise and our ability to change consumer behaviour and do that not on a spec basis—"build it and they will come"—but on an informed, proactive basis. So we're prepared to do that, and we indeed have been thinking through it and working it together. We understand that this is a significant opportunity to accelerate how Ontario and indeed the world—because what we firmly believe is that Ontario can be the model for the world but we absolutely know you have to win at home first to be successful globally.

Mr. Delaney: Are you suggesting any amendments to Bill 21?

Mr. Disenza: I'm suggesting that on some of the privacy issues specifically it should address some of the scope of that and on some of the partnerships there should be some consideration of private sector participation a little more explicitly.

The Chair: We'll now move to Mr. Yakubuski. Again, about two and a half minutes.

Mr. Yakubuski: A lot of technological talk there, some of which I have to admit I have no idea what you're talking about. But we know the general purpose of what we're doing.

In the technology of the meters, it would seem to me that your presentation is suggesting that these meters have to have the technology that gives the proper kind of information to make real decisions with regard to energy usage, be you a commercial customer or a residential customer. So am I correct in reading you in saying that you want to ensure that these meters are the right kind of meters, that we're not talking about something that just tells you that you've used X number of kilowatts between

this time of day and that time of day, but really being able to access that to determine what it's using, how it's using, so that you can really make some behavioural changes as a consumer?

Mr. Discenza: Absolutely, sir, and your comment emphasizes the point about there being a lot of technology. The point is, you shouldn't have to worry yourself about it. So these meters—and let me talk about the meters. While we call them smart meters, they probably will not require more intelligence than is in your wristwatch today. The smartness comes from the systems, the data, the presentation to the consumer and the real-time interaction. So they saw their bill; they saw a piece of information. The real smartness comes from, what did they do with it? How did they act upon it? Is there a different way to present it? I think that's the real smartness. So with all due respect to the meters, they're smart, but like I say, technologically a calculator will do it in terms of the—it's the systems around it. That's what we're emphasizing.

On the meter side, we're emphasizing also that they should not be something only for Ontario, made only for this. They should be using what we call standards so that people are encouraged to lock into the system and in fact think about a world where the systems—like we do today, where people can come up with new applications and lock into that. I think that's what we're suggesting.

Mr. Yakabuski: One other quick question: When we're talking about a real meter that does real work, the government has put forth numbers of \$1 a month for these meters. If these are really doing the job, the right kind of meters—people have told me that just the administration of proper meters in some jurisdictions where they have them now is \$2 a month. With the right kind of metering, is the government right or wrong when they start talking about \$1 a month?

Mr. Discenza: Do any of my colleagues—

Mr. Perry Stoneman: Sure, I'll take it. We've had studies around the world. Some jurisdictions have done this before. If you look at the total cost of services, there are savings in a broad range from implementing the smart meters. So the cost of the meter itself is not what should be focused on. You have to consider work management, the intelligent grid, knowledge of outage before consumers call etc. The studies—

The Chair: I'll have to intervene there; sorry, gentlemen.

Mr. Hampton, you have the final couple of minutes.

Mr. Hampton: I found your presentation intriguing. You mentioned that you will have to leverage a fair amount of capital. Do you have a sense of how much capital you're going to have to leverage?

Mr. Discenza: In the word "leverage" is capital that we are investing in some of the infrastructure. There will be some adaptation, depending on what eventually comes out in the actual meters. But to do it on a scale and with the speed that you require, if it was done individually we would be talking in the tens and hundreds of millions, if you had to build a purpose-built network. The beauty

here is that what we're talking about is leveraging technology that's there today. We're suggesting that it will not be one purpose-built network that will solve this problem; it will be the ability to take advantage of the private and even public investments that are there today, or else it will be hundreds of millions.

Mr. Hampton: If you're going to talk about that amount of capital, it would seem to me, based upon my experience, that you need some long-term commitments. In other words, you need some long-term commitments that this capital is going to be paid back. So what kind of time span would you think you would be talking about here?

Mr. Discenza: Depending on how open the system was, there's an opportunity for private sector companies to use this system to deliver not just electricity, for example, but other types of consumables, to present other information to the consumers. So it would depend on how open and accessible for commercial applications it would be. Obviously, the more commercial leverage it can get, the quicker the return. If it was a closed system for metering only, I don't even know if there's a reasonable business case that would actually return that kind of capital.

Mr. Hampton: Just to be clear, what we're really talking about in terms of smart metering here would have to be something much broader than just measuring time-of-day electricity use etc.

Mr. Discenza: Absolutely, or being able to put the smart metering on those networks that do many more things today. There are networks that do all kinds of things today.

Mr. Hampton: You mentioned, I think in your earlier responses, that you've looked at smart metering in other jurisdictions. Can you tell us which jurisdictions?

Mr. Stoneman: Absolutely. Enel in Italy is one where we're working and have participated from the onset. EDF in France is running pilots right now. Vattenfall, Sweden; FP and L, Florida, USA; and TXU, Texas, USA, are jurisdictions that we're actively engaged in. The approach and scale of what they are doing is not quite as large as what will be embarked on in Ontario. The conservation messages that are coming out here, we believe, are world-class, and in a leadership position.

The Chair: Thank you, gentlemen—Messieurs Discenza and Monsieur Stoneman and M. Labrie—for your testimony on behalf of Bell Canada, Capgemini and Hewlett-Packard.

GREEN COMMUNITIES CANADA

The Chair: I now invite our next presenter, Mr. Clifford Maynes, executive director of Green Communities Canada, and entourage. I'd invite you, gentlemen, to please have a seat. As you've seen, 20 minutes' presentation time. Any time remaining will be distributed among the parties afterward. Please begin.

Mr. Clifford Maynes: Thank you, Mr. Chair and members of the committee. I am Clifford Maynes. I'm

the executive director of Green Communities Canada. I'm joined by Keir Brownstone, manager of a Green Communities member organization in Toronto called Greensaver, on my left; and by Brent Kopperson, manager of Windfall Ecology Centre in York region, on my right. Both Brent and Keir are also members of our national board of directors.

Green Communities Canada would like to pledge our broad support for Bill 21, its intent and purpose and so on, although I would say that we're focusing pretty much entirely on one aspect of the bill—and we're not speaking at all to the issue of smart metering. The aspect of the bill that we want to focus on has to do with the section that would enable universal energy efficiency labelling of buildings. It's very much an area that we have an interest in and involvement with. We heartily endorse this step and we're going to be providing a number of recommendations that we believe will enhance that provision in the bill. In addition, we would like to briefly address the opportunity under section 7 for community-based public education and outreach to promote energy efficiency and conservation.

A bit about Green Communities Canada: We're a national association of community-based non-profit organizations that deliver innovative, practical environmental solutions to Canadian households and communities.

The association was founded over 10 years ago now, in 1995. It has grown to include about 40 member organizations in all regions of the country, but we are particularly strong in Ontario, where we have our original roots. About half of our members are there, and we serve most of the province's population.

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We embody a movement of results-oriented environmentalists, delivering programs and services that are designed to achieve immediate, measurable environmental gains. We do that by establishing a wide range of cross-sectoral partnerships at all levels—community, provincial and national—with all sectors of the community—business, media, community groups. Certainly municipalities are key partners; also utilities of all types. Our members determine what the local priorities are and deliver a range of services and programs that deal with really all aspects of the environment: green space, pesticide reduction, sustainable transportation, water conservation—you name it.

We're quite an involved organization after 10 years or so of Green Communities Canada, and some of our members have been around longer than that. Our involvement with the provincial government includes a \$1-million-plus program that we deliver on private well stewardship called Well Aware that is currently being reactivated with the Ministry of the Environment, and another program that we're working on with your Ministry of Health Promotion. It's called Active and Safe Routes to School. It's about getting kids out of the cars and back on the streets.

Energy efficiency is a real focus for us. For well over a decade we've helped people to save energy in their

homes by providing quite sophisticated advice on how they can reduce their energy consumption through measures such as air leakage control, insulation, heating system upgrades and so on. Today, we're leading service providers of a service called EnerGuide for Houses. I'd like to speak about that for a minute because it's very relevant to our presentation.

EnerGuide for Houses is a national tool, a benchmark for energy performance of houses in Canada. It's internationally recognized. Again, it's a sophisticated system that utilizes quality-assured test procedures, software and highly trained advisors who do the work. It includes an air leakage test and, for those who have ever had one on their house or witnessed it, it involves reducing the air pressure in your house to determine in fact how much infiltration there is, which is generally the greatest source of heat loss in your home. The recommendations have a wide range of benefits, including energy bill savings, but also increasing the value of your home, increasing comfort, making certain rooms usable that weren't otherwise usable and so on, as well as the environmental benefits, which is a key reason why we're in this game. The service is subsidized by the federal government, which also provides a performance-based incentive in the form of a post-retrofit grant.

Our involvement in this service goes back to 1997 when we actually were the pilots for the federal government in delivering this. Since then, we've done about 50,000 of them: a fifth of all the EnerGuides done Canada-wide and three out of five in Ontario. We have established the highest standards of technical excellence, quality control and delivery. We often work with Natural Resources Canada to help to modify the program and improve it.

We also originated the idea of the retrofit incentive program, which is an outgrowth of EnerGuide for Houses. Essentially, you get a cheque based on the demonstrated improvement in home performance as measured by EnerGuide for Houses. The federal government initially committed \$75 million, and last year upped that by another \$275 million for delivering that retrofit incentive Canada-wide. It's a commitment over the next four years.

That's had an enormous impact on participation in the program, and also the results. We just looked at our last-year results. Our customers in Ontario in 2005 invested in about \$10 million in retrofits, received \$2.8 million in incentives and their annual savings are \$2.5 million. We're looking at generally more than a third in savings of space heating costs. So we're talking about some serious, deep energy bill savings here and some serious environmental benefits.

We've also been champions in establishing a national low-income energy efficiency program, and recently we were successful. As you may know, the federal government has committed \$500 million over the next five years for a national low-income energy efficiency program, because EnerGuide for Houses serves the able-to-pay market, but the people who are hardest hit by high

and rising energy costs usually have very limited means to protect themselves through energy efficiency, so we're pleased that's happening.

The broad intent of Bill 21 is quite clear, but our first recommendation would be to strengthen the mission through a stronger preamble, that Bill 21 include a clear statement of purpose to: conserve energy; reduce energy bills; improve air quality and protect the health of Ontarians; reduce greenhouse gases; protect the environment; improve the energy productivity and competitiveness of the Ontario economy.

We say this partly to guide the development of implementing regulations to inspire the implementation of the bill and also to acknowledge the broad range of benefits that arise from energy efficiency that are sometimes underestimated. In particular, I draw your attention to the last one. We're talking about energy productivity and competitiveness. In an era of rapidly and continually escalating energy costs, an economy like Ontario can't afford to be wasting energy on leaky, poorly insulated buildings. It's an economic development and competitive issue, as well as being a personal bill issue, an energy planning issue and an environmental one.

(2) We would like to see subsection 2(1) of the bill strengthened to require, rather than simply enable, mandatory universal labelling of building energy performance at point of sale, lease or transfer. We believe this will provide the basic consumer information that we all need about the buildings that we, as homeowners or owners of commercial and other institutional buildings, require. Universal energy efficiency labelling has been adopted for many energy-consuming products, but we don't have it for buildings, which consume a lot more than many of the products that are currently labelled.

Our experience with voluntary labelling in the residential sector has been wonderful; it has shown the benefits and value of the system. But the penetration of the housing stock now is still only less than 1% of the houses in Ontario. It shows that if you want the benefits to be extended, as I believe we do, to all residential building owners and also all owners of other buildings, then we should go to a universal system. I draw your attention to the fact that the European community adopted directive 91/EC in December 2002, which actually requires member states to ensure that when buildings are constructed, sold or rented out, an energy performance certificate is made available to the owner by the owner or the prospective buyer or tenant, as the case may be. They say the validity of the certificate shall not exceed 10 years. So this idea of universal labelling is already the law of the land in Europe. Industrial countries similar to Canada are already going down that road and are in the process of implementing that approach.

(3) EnerGuide for Houses should be adopted as the standard for labelling residential buildings. There are a number of reasons for that: EnerGuide is a trusted brand, it's recognized across Canada, it has already been proven and developed in use, a number of utilities in provinces have built programs that are based on EnerGuide for

Houses, and there would certainly be an easy fit with existing funding, including the federal retrofit incentive program. It would allow comparability of Ontario statistics across the country.

Also, EnerGuide provides the necessary depth for a meaningful building performance rating system. It includes air leakage control, as I described—air leakage measurement, which is again one of the primary concerns—and a thorough basement-to-attic energy audit. Next, it provides recommendations for priority retrofit, so it's not just a measure of where you are today, but it tells you how to get to the point where your home performance will be brought up to what's economically achievable. We think this is critical. Bill 21 isn't just about where you are today; it's about improving energy efficiency, so those recommendations, very targeted and very specific, are an essential part of what I think you want to do, and we'd like to see that incorporated.

Finally, there is already a delivery in place for EnerGuide for Houses and it would simply be a matter of ramping that up. It includes quality assurance, which is really critical to us. We don't want to see the service degraded by becoming universal. We think that at the same time as it's applied universally, we have to maintain very high standards.

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(4) Where EnerGuide for Houses is not applicable for certain types of buildings, we believe the province should join with the federal government, the Office of Energy Efficiency and EnerCan in establishing standard measurement protocol for other kinds of buildings. EnerGuide for Houses is really just for single-family houses, low-rise townhouses, semi-detached and so on. For high-rises, for many commercial buildings and so on, you need other kinds of measurement tools. We believe those should be established.

(5) We'd like to see Bill 21 amended to enable the province and local governments as well to establish minimum energy efficiency standards for existing buildings. We'd like enabling legislation that would allow the province but also individual municipal governments to say, "These are the standards that we would like to require for buildings." The reason we would like to see this happening is because it would enable us to get at the existing building stock, which is the major part of what's out there. Building codes can affect what happens up front, and we obviously believe those need to be strengthened, but we're largely in the business of how to retrofit existing buildings, and this is part of the job that needs to be done if Ontario's going to achieve its conservation goals. You can do it with products like fridges, freezers and even automobiles by setting very high new standards because there's a turnover in the stock, but many of the buildings we have today are going to be in use 20, 50 and maybe even 100 years from now, so we have to get at those buildings if we're going to achieve our overall goals.

I'd like to emphasize that it would not impose an undue financial burden to have these kinds of require-

ments exercised because the amount that needs to be spent on upgrading energy efficiency is actually pretty tiny compared to what we know people already spend on an annual basis in remodelling their bathrooms and kitchens and putting in additions and so on. Furthermore, it pays. It pays in reduced energy bills, in increased value of property, in increased usability of the property and so on. So we don't think that would be undue.

(6) I'd just summarize that there needs to be a whole infrastructure in place to help make this happen, a contracting infrastructure, which is underdeveloped in Ontario. We believe the province has a role to help that happen. I won't go into the details. We give some more details here. That's something we would follow up on.

(7) In developing and implementing the regulations for this legislation, we believe that you should work with those of us who've got experience in this field. We'd be more than happy to consult with you on a much more detailed basis about how to achieve these objectives.

Finally, I said I was going to mention our potential role relative to section 7 of the bill, which enables the minister to enter into agreements to promote energy conservation and energy efficiency. The strength of Green Communities is community-based social marketing. We reach people where they live, where they work. We address the real-world obstacles and barriers to changed behaviour, what inspires them and what makes them take initiative. This is the way that you're going to achieve change. I think most people recognize that, as nice as it might be to have mass-marketing techniques used, they're not going to get the job done. You have to reach out to people. This is what our member organizations do, and we would be very pleased to work with the provincial government, as we have in the areas that I've cited, to help make this happen at the community level.

That's my presentation. Thank you.

The Chair: Thank you, Mr. Maynes, to you and your colleagues. We have less than a minute or so each.

Mr. John O'Toole (Durham): Thank you very much for your presentation. I would say at the beginning that I've had a home energy audit done on a property by Peterborough Green-Up and I'm looking forward to using their advice to make the proper modifications. I think you're right in your last remarks: It's grassroots, it's consumer relationship, it's about education and about advice. I think that needs to be empowered, and I'd probably encourage similar retrofit grant mechanisms based on the efficiencies gained that address the next point I'd make, which is this whole idea of the conservation culture. The only thing I've seen published from Mr. Love, the commissioner, is his salary. That is a bit critical, I suppose.

Conservation is an important part of the solution to this problem. The big part of Bill 21 technically is this introduction of these so-called smart meters, because they're really not smart; they're time-of-use. You could send them a memo and say, "Talk to your freezer. Talk to your heater. Talk to using efficiency in your home," whether it's the fridges, the bar fridges, whatever, and

not have to install any technology. In fact, if they wanted smart technology, you could really start to use wireless technology to control remote properties and do a lot of things that aren't envisioned in this first wave of so-called smart meters.

I'm wondering what the first signal from the government could be, besides the \$8 or \$10 a month on your bill for this meter that doesn't actually do anything—no, it really doesn't. You can send them a memo and tell them how to shift some loads. What kind of—

The Chair: Mr. O'Toole, I have to cut it there. Gentlemen, feel free to address that in the next point.

Mr. Hampton, please, about 90 seconds or so.

Mr. Hampton: I want to ask you this question. As I understand it, Manitoba has a retrofit program for homeowners' homes called—I think it's Power Smart. I believe Quebec has one called Energy Wise. As I understand it, some of the programs are implemented by energy ministries in those provinces, some by Manitoba Hydro, Hydro-Québec. Have you worked with those? How effective are they? Why don't we have one yet in Ontario?

Mr. Maynes: The most effective thing that's happened to date to encourage retrofits has been the addition of the federal government's retrofit incentive to the EnerGuide for Houses. The average incentive is about \$700 now, I think, but people spend about four times that amount.

Some of the provinces—and this is all fairly new and I don't have all the data on it—are doing things like saying, "We'll match the federal incentive," or "We'll match it for electrically heated houses," or "We'll create a program that specifically targets low income" and so on. So there are various ways in which provinces are doing these things, and we'd be happy to follow up, if you'd like, with details about what some of them are.

The Chair: Thank you, Mr. Maynes. Please feel free for that follow-up.

We'll now move to the government side; again for 90 seconds.

Mr. Leal: I want to thank Clifford Maynes from Peterborough for coming here today and sharing his expertise in this area. I had the energy audit in my home in Peterborough and saved money.

I just want to make a comment that Mr. Love's salary is a piker compared to what our previous administration paid to Eleanor Clitheroe. I'll get my colleague Jennifer Mossop to ask some questions.

Ms. Jennifer F. Mossop (Stoney Creek): I was just going to quickly make the comparison on the smart meters. We were discussing in rural caucus recently about changes made many decades ago when they finally decided to bring water meters in in many communities, and everybody thought that was a terrible expense to put these things on people's buildings. But lo and behold, the consumption of water dropped 75% as a result. Maybe the smart meters are a bit of a refinement of that.

But my question to you is, in your experience, which is quite vast, are your clients driven bottom-line or is

there any real culture of conservation in terms of the responsibility to conserve?

Mr. Maynes: I'll ask Keir to make a comment here.

Mr. Keir Brownstone: There has been a shift over the years. When the EnerGuide programs first started, the largest driver for participation was comfort by far and away. The second was energy cost. That has shifted significantly in the last few years, where energy is becoming much more important and maybe equal, if it hasn't overtaken comfort. Unfortunately, the driver of the environment and responsibility towards the environment is still pretty far down that list.

The majority of our clients are concerned with issues of the environment and they do appreciate the fact that they're doing some good in terms of CO₂ reductions that are significant. In each house, in fact, the reduction is over three tonnes per household on average. But the difference, where the rubber hits the road, is where they're going to take money out of their pocket, and they're taking money out of their pocket to reduce costs and to improve comfort.

The Chair: Thank you, gentlemen, Messieurs Maynes, Brownstone and Kopperson, for your testimony on behalf of Green Communities Canada.

I'd like to advise members of the committee that we are in recess till 1 p.m.

The committee recessed from 1200 to 1303.

ADVOCACY CENTRE FOR TENANTS ONTARIO

LOW-INCOME ENERGY NETWORK

The Chair: Ladies and gentlemen, I will call the committee back into session, and we'll proceed immediately to our first presenters. I would invite Ms. Mary Todorow and company from the Advocacy Centre for Tenants Ontario. Ms. Todorow, just to let you know the protocol here, you'll have approximately 20 minutes in which to make your remarks. If you use, for example, 15 minutes or so, any time remaining will be distributed among the parties evenly. I invite you to please begin.

Ms. Mary Todorow: Thank you. My name is Mary Todorow. I am a policy analyst with the Advocacy Centre for Tenants Ontario, a provincial legal aid clinic funded by Legal Aid Ontario. I'm here with Mary Truemner, who's a staff lawyer at our clinic, and with Zeenat Bhanji, who is the coordinator of the Low-Income Energy Network.

ACTO is one of the founding members of the Low-Income Energy Network. We're a group of environmental and affordable housing advocates. We joined together in early 2004 to raise awareness of the impact of rising energy prices on low-income households and to suggest solutions to aid these vulnerable consumers. Our approach places the greatest emphasis on reducing energy consumption and costs for those least able to afford higher energy prices and who face barriers to full participation in energy conservation initiatives. LIEN has

highlighted the need for the Ontario government to take the lead in safeguarding low-income consumers as it moves forward with its plan to address the energy supply and demand crisis in this province.

We recommended a strategy consisting of a targeted low-income energy efficiency program at no cost to recipients; low-income rate assistance; extensive consumer education about energy conservation; and adequate emergency energy assistance to help households in short-term crisis.

We're here today at these public hearings on Bill 21 to share our concerns about a proposed government initiative that would extend smart metering to include multi-residential buildings that are currently bulk-metered and would allow landlords to unilaterally install electricity sub-meters in order to bill tenants directly for their in-suite electricity use and separately from their rent. We understand the government is preparing amendments to Bill 21, or regulatory provisions, to allow sub-metering in multi-residential rental buildings without tenant consent. The provincial government's rationale is to involve the multi-residential sector in the culture of conservation being promoted as part of the plan to reduce peak electricity demand. The goal is to give multi-residential households direct control over their electricity use and to allow these consumers to get credit for changing the amount or the timing of their electricity consumption.

We believe that proceeding with smart metering and electricity sub-metering in the multi-residential rental sector is a flawed conservation strategy that will significantly decrease, not increase, incentives to save energy in the multi-residential rental sector. In addition, by moving to time-of-use pricing for in-suite electricity use, the government will increase the financial burden on low-income tenant households and threaten their ability to keep the lights on, maintain their housing and pay for food, medicine and other basic necessities.

This is our key message to you today: By shifting the burden from landlords to tenants, smart sub-metering in multi-residential buildings will reduce conservation incentives overall in this sector and will hurt low-income consumers. It's a lose-lose situation.

In May 2005, LIEN released a critical analysis of sub-metering in the multi-residential sector. I haven't given you the full report, but I've given you the executive summary. It's in your package and it's available online. We'd like you to read it in full. In it, we explained why sub-metering is not cost-effective, not an effective method to achieve the government's conservation goals, and not fair to tenants. I'm going to highlight for you why we came to these conclusions.

There are no comparative studies or analysis on the costs and benefits of sub-metering versus other conservation strategies, such as energy efficiency retrofits and education. We've asked for these reports. We did a cost analysis in our own report where we found that the cost of installing and operating these meters was more than you could potentially save in most of the scenarios that we examined. We've looked and we've asked, and we haven't been able to get any other studies.

Before the government moves forward on such an enormous undertaking, there is a need for a proper analysis of the potential of smart metering and sub-metering as conservation tools and for a cost-benefit comparison with other conservation approaches, including energy efficiency retrofits and education.

The bulk-metered, multi-residential sector is responsible for a relatively small portion of the electricity use in Ontario, about 7% of annual electricity consumption across the province. In contrast, Ontario's almost four million residential single-metered customers account for 24% of the electricity used in the province, and large commercial and industrial users account for 50% of annual electricity use.

Less than 30% of apartments in Ontario are electrically heated. Non-electrically heated buildings are bad candidates for electrical sub-metering because there is minimal conservation potential and the tenant's ability to reduce electricity consumption is limited. This is because uses for electricity in a non-electrically heated building are largely non-discretionary; for example, the fridge has to run, you have to turn lights on to illuminate the rooms and you have to cook your meals. This is for non-electrically heated buildings.

If an apartment is electrically heated, a tenant can turn down the heat, but only if there is an in-suite thermostat in place. The factors that determine how much they can turn down the heat to a safe and comfortable level are largely determined by how energy-tight the unit is, and that's mostly in the control of the landlord.

Tenant households generally use less energy than homeowners do because, on average, it's a smaller household size—it's 2.09 compared to 2.69, on average—and they live in smaller spaces. The average apartment is about 990 square feet.

Households in the lowest-income quintile in Ontario—and the majority of those are tenants; over 70% in the lowest-income quintile—have fewer appliances, on average, and fewer opportunities to conserve. This is especially relevant with respect to smart metering, since tenant households are the least likely to have washing machines, dryers or dishwashers in their homes, and they have no control over the energy efficiency of landlord-purchased refrigerators. Tenants have the least capacity to shift their energy use to lower-cost, off-peak time.

The installation of time-of-use or sub-meters behind bulk meters does not, in and of itself, save energy. Time-of-use meters or sub-metering works no magic on heating or cooling equipment, appliances, lighting or plumbing systems.

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The theory behind the energy conservation potential of smart meters or sub-metering is based on the effectiveness of price signals that would be sent to tenants. The premise is, if the tenants do not pay directly for utility service, they're wasting energy, and the transfer of utility costs directly to tenants will foster more frugal use of energy. However, tenants are not well equipped to respond to price signals for two reasons: Tenants don't

have the authority to undertake in-suite energy efficiency retrofits; and low-income tenants can't afford to invest in those types of retrofits to do the energy conservation.

The incentive structure for energy conservation in the residential rental sector is significantly different from homes, condominiums and social housing. In the case of condominiums and single-family dwellings, the owner and resident are one and the same. In the social housing sector, there's a community of interest between social housing landlords, who fund tenant subsidies, and the tenants. In contrast, in the rental housing sector, the owner and resident are separate, with markedly different interests. The landlord's purpose is to make a profit and minimize costs, while the tenant seeks a safe, comfortable and affordable home. This split incentive creates a barrier to energy efficiency. The concern at its most basic level is that if the landlord does not pay for the electricity, the landlord will have no incentive to conserve; conversely, if the tenant does not pay, the tenant will have no incentive to conserve.

It is our position that sub-metering puts the financial incentive to conserve in the wrong place. With bulk metering, the landlord pays for electricity, and the financial incentive for conserving lies primarily with the landlord. Sub-metering shifts the incentive to conserve from the landlord to the tenant. This shift shields the landlord from the responsibility to provide and maintain on an ongoing basis an energy-efficient building and appliances for the use of tenants. This represents a significant lost conservation opportunity. It's flying in the face of everything you want to achieve.

The most conservation bang for the buck comes from leaving the incentive with the landlord. It is landlords, not tenants, who have control over most of the high-impact and persistent sources of energy conservation. We've demonstrated this; we put it in your information package. We took the federal government's One-Tonne Challenge, a challenge to all of us to reduce our energy use. We basically just did the scoring—what's within the landlord's realm and what's within the tenant's—and most of the measures that have a high impact on energy conservation rest with the landlord.

I want to let everybody take a moment and think about who are going to be the real winners and losers with smart metering or electricity sub-metering. That's really what we want you to do; just think about it. We think the real winners are landlords and suppliers. The meter and billing services companies win because they realize a significant business opportunity with the installation and operation of thousands of new meters in rental units across Ontario. Landlords win because they get an increasing-cost item out of their operating budget.

Tenants stand to lose in many ways. The median income of Ontario's renter households is less than half of homeowner households: \$32,000 versus \$66,000. That's from the last census. The median means that half of renter households earn that and below. According to Statistics Canada data, more than a third of all tenant households in Ontario are living at or below the low-

income cut-offs. Stats Canada doesn't formally recognize those as poverty lines, but most people who are anti-poverty advocates have adopted those as good measures of people living in fairly strained circumstances.

Persons on social assistance, single-parent families, elderly women, visible minorities, immigrants and persons with disabilities are all over-represented in the population of low-income tenants. These vulnerable households in particular will be disproportionately hurt by sub-metering and rising energy costs.

One additional consideration: If the government allows landlords to sub-meter without tenant consent, it will be breaking the tenancy contracts between landlords and tenants and imposing a steadily increasing charge on tenants that will have a severe impact on those who are low-income. This is a radical departure from the last 30 years of landlord-tenant and rent regulation legislation in Ontario. Having utilities included in the rent is a fundamental and valuable term of many residential rental contracts between landlords and tenants. If the government allows landlords to unilaterally remove utilities from the rent without tenants' consent, it will be removing statutory protection that many tenants have contracted to expect.

While everyone must do his or her part for energy conservation—we don't dispute that—we believe, for the reasons we have highlighted today and set out in detail in our report, that the government should not proceed with smart metering and electricity sub-metering in the multi-residential sector. We think the focus should instead be on:

- conservation and demand management programs for landlords and tenants;

- education and social marketing targeted at landlords and tenants to change attitudes about conservation, giving them the information they need to reduce usage;

- further studies on achieving energy conservation without increasing the financial burden on tenants—that would include pilot projects;

- a detailed and neutral analysis of the impact of smart metering and sub-metering on energy usage in the rental sector.

If the government does decide to go ahead with the smart meter initiative and go ahead with electricity sub-metering, we've made a number of recommendations—we had them in our report and I've attached them here—on ways that you could mitigate the damage. We hope you will read through them.

We also strongly recommend that tenants and tenant advocacy groups be included in any stakeholder consultations regarding implementation of smart metering and electricity sub-metering.

Thank you for letting us share our concerns with you today.

The Chair: Thank you, Ms. Todorow. We'll now move to the NDP side. I remind us that we have about three minutes or so each.

Mr. Hampton: Can I ask you this: Has there been any consultation so far between the government and tenants'

organizations such as your own on what the government's intentions are, what the potential negative impacts would be not only on low-income tenants but on low-income families in general? Has the government come to talk to you at all on these issues?

Ms. Todorow: They have, and they recognize that it will have an impact on low-income tenant households in particular. But my understanding is that they feel that they will be gaining kilowatts saved through this venture. Looking through the OEB's own implementation plan, it shows that in non-electrically heated residential units there's very little actual overall conservation that you can achieve. You could time-shift the use but you're not actually reducing. They said in the appendix to their smart meter implementation plan that it's 0.0% to 5%.

When we went through our cost analysis—the cost of installing these, the admin cost to produce the bills etc., all of that, particularly in non-electrically heated buildings, which is the majority of these bulk-metered apartment buildings—we found that you're spending more than you can possibly save in energy, all the costs involved.

We particularly think that we really need a real, impartial study because most of the stats are coming directly from sub-metering companies, who have a financial interest in this. There's been no neutral, impartial analysis of what will happen before and after and how it affects housing affordability and comfort. People may be turning down the heat so low that they get sick. They found this in the UK. When they wanted to reduce health costs, they went out and did a home energy efficiency program for low-income people to reduce the draw on the health system.

We think there just hasn't been enough study done of it. We think that for such an enormous undertaking that has such a huge, negative impact on people, and to not really achieve the conservation goals that you really want, don't go ahead unless you've really done your homework.

Mr. Hampton: One of the recommendations of the Canadian Environmental Law Association, in *Power for the Future*, was that the government should establish mechanisms to ensure the delivery of programs to low-income consumers. These “should be incorporated into the DSM mandates and incentives provided to energy and electrical distribution utilities. A specific portion of DSM spending should be set aside for this purpose, including revenues from the public benefits charge....” In other words, government needs to establish a very targeted, low-income energy efficiency strategy.

The environmental law association made this recommendation two years ago. In their report of just a few weeks ago, they say that nothing has been done on this front, from their perspective.

The Chair: Mr. Hampton, I'll have to intervene there. I apologize. We'll now move to the government side. I remind you that you have less than three minutes, please.

Mr. Leal: I want to thank you for your very detailed presentation. I want to ask a question about LDCs. I

know particularly in my hometown of Peterborough, with low-income housing, our LDC, the Peterborough Utilities Services, has had great success with electric thermal storage heaters. Is it a good idea to advance that kind of concept on a wider basis?

Ms. Todorow: Absolutely. I know about that project because the Low-Income Energy Network has been trying to target the low-income and social housing programs that are currently included in LDCs, in what Mr. Hampton was saying. LIEN has been advocating for a province-wide, comprehensive, mandatory program. We actually made presentations at the OEB. What happened was that the OEB told LDCs they could do it at their discretion. It was encouraged but not mandated. But this is excellent. There are about 33 utilities across the province that have included targeted programs, but that's out of 95.

It means that people don't have uniform access to those programs. It's not across the province, it's not coordinated and it's not comprehensive.

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Mr. Leal: A follow-up: Do you have any specific amendments? I haven't had a chance to read your recommendations yet, targeted to provide assistance to your group. If you have any specific amendments to the legislation, I wonder if you could forward them to us, so we have the opportunity to look at them as we move forward with our deliberations on this bill.

Ms. Todorow: We will, and we have lots of them attached to our full report, which is available online. You have the executive summary, and you can read it. We've attached it to our comments.

Mr. Leal: I truly appreciate your good work in this field and I think there are some helpful suggestions we can seriously look at.

The Chair: Thank you, Mr. Leal.

Mr. Yakabuski: Thank you very much for your presentation. I have a couple of questions. You were talking about sub-metering, in your opinion, being harmful to the low-income tenants in a building.

Ms. Todorow: As well as not achieving the full energy conservation policy.

Mr. Yakabuski: Exactly. Would I be wrong in making the leap that in any given building it's not likely you're going to see CEOs from Bay street and low-income tenants living in the same building? In general, people in similar income categories live in the same buildings. If I'm wrong, you can tell me, but if that is in fact a generally accepted norm, then how would the individual metering of that particular building be anything but fair to all the tenants in that building, who are all paying for the electricity they themselves use? If someone is actually paying for something, out of their pocket, and recording it and knowing it and calculating and accounting for it, would you not feel that is an incentive for them to watch their dollars and cents?

Ms. Todorow: Our point is that in non-electrically heated buildings there is so little discretion in terms of watching your pennies and doing that. We all have to

conserve. I think that basically everyone in the building should be doing their best to turn off the lights and reduce their usage, but the main things you can do in non-electrically heated buildings—it really doesn't matter about your income level. What you're saying is that some people may be using more, and why would the other person be subsidizing the other person's usage?

Mr. Yakabuski: But if income doesn't matter, then how is it hurting low income as opposed to others? You're flipping now to the efficiency of doing the building, period—

Ms. Todorow: That's right.

Mr. Yakabuski: —away from the income. Low income is a very common condition in my riding. We are one of the lowest three in the province as far as average income in my riding is concerned. I recognize that and the difficulties low-income people have with energy costs, as well as all other housing costs. I don't want to not have that connection, because you're slipping away from that connection and going now to the general premise of there are no savings. Which is the priority here?

Ms. Todorow: I think the priority is to do two things: It's to get the best conservation bang for your buck, and to also make sure that people's housing is not threatened.

The Chair: Thank you, Mr. Yakabuski, and thank you, Ms. Todorow, and your colleagues from the Advocacy Centre for Tenants Ontario.

ELECTRICITY DISTRIBUTORS ASSOCIATION

The Chair: I now invite our next presenters, Michael Angemeer and Charlie Macaluso, from the Energy Distributors Association. Gentlemen, please be seated. As you've seen, you have 20 minutes to make your presentation, the time remaining being distributed evenly among the parties for questions and comments. Please begin.

Mr. Charlie Macaluso: My name is Charlie Macaluso. Good afternoon. I'm the president and CEO of the Electricity Distributors Association of Ontario. I'm joined here today by my colleague, Michael Angemeer, who is the vice-chair of our association, and Michael is also with Veridian Corp.

The EDA is the voice of Ontario's local electricity distributors, the approximately 90 public and privately held companies that deliver electricity to over four million Ontario homes, businesses and public institutions. LDCs are an essential piece of Ontario's electricity system, as their business is focused on the reliable and safe delivery of electricity. LDCs also deliver significant economic benefits to Ontario each year: They provide almost 10,000 jobs to Ontarians; they stimulate Ontario's economy through a payroll of well over half a billion dollars; they invest almost \$1 billion in Ontario's infrastructure; they contribute over \$150 million through proxy taxes to the provincial government against the stranded debt of the former Ontario Hydro.

LDCs are closely linked to their communities, not just because they facilitate and promote economic development; they also maintain their community's system of electricity wires, they are the primary electricity billing agents dealing directly with residents and small businesses, and they are mostly municipally owned.

LDCs are very committed to electricity conservation. They create and implement conservation programs across the province, saving consumers money, protecting our environment and helping to solve Ontario's energy supply challenge.

In the spring of 2005, the Ontario Energy Board approved over \$160 million in conservation and demand management applications submitted by almost 90 of Ontario's electricity distributors. I won't get into detail today, but the initiatives included, among others, programs to promote efficient lighting, heating and appliance activities and conservation education for consumers; pilot programs for smart meters; increased research, development and improvements to distribution networks; most recently, the development and launch of the powerWise conservation brand, which will be an important flagship for the continuation of the conservation culture that many of our LDCs have partnered with the government to promote.

The EDA and the LDCs believe that Bill 21, the Energy Conservation Responsibility Act, is a next step in the movement towards a conservation culture in our province.

I will now turn over the presentation to my colleague, who will speak to the specific elements of Bill 21.

Mr. Michael Angemeer: Thank you, Charlie. Good afternoon to the members of the committee. My name is Michael Angemeer. I'm vice-chair of the EDA and president and CEO of Veridian Corp. First of all, I would like to thank you for your invitation to participate in this process and to be given the opportunity to provide you with an LDC perspective on Bill 21.

For local distributors, this enabling legislation provides the framework that will facilitate the smart meter initiative in going forward.

I would also like to applaud the government's conservation efforts. Local distribution companies play an important role in Ontario's conservation culture as leaders in conservation and demand management activities, known as CDM, since LDCs are on the front lines of delivery for the CDM programs.

LDCs are also on the front lines when it comes to the delivery of smart meters. The smart meter pilot projects carried out by LDCs provide invaluable data and information, lessons learned that can be leveraged by the province as a detailed implementation plan is formulated. The pilot projects allow LDCs to test technologies best suited to their customers in local communities and will also enable LDCs to provide meter services that are innovative, reliable and have been vigorously tested. The EDA and LDCs look forward to continuing to work with the government on the implementation details of the smart meter process and the entire conservation file.

Comments today are meant to provide constructive feedback to the government on the proposed legislation. I'd like to begin by focusing on the positive elements of Bill 21.

The bill begins the process of scoping out activities for the various parties necessarily involved in the delivery of this initiative. Bill 21 allows the ministry to issue directives to the OEB to allow distributors to recover costs associated with smart meter deployment, and provides the minister with the authority to make regulations relating to the establishment of variance accounts by the SME and the LDCs. The bill also puts in place a framework for the recovery of costs related to smart meters, including the recovery of stranded meter costs, which are legacy assets.

However, the EDA and the LDCs do have some concerns with Bill 21. As the ministry is aware, many of the design details of the smart meter system still need to be determined. Accordingly, the legislation has been drafted to maximize the flexibility of the decision-makers as design decisions are made down the road. The result, therefore, is that the SME is currently provided with an unfettered ability to carry out the very broadly defined smart meter initiative.

The EDA is concerned that overly expansive definitions are used to define the roles and activities of the SME. The EDA and the LDCs believe that key discussions and decisions need to occur in advance of the passage of the legislation in order to effectively capture the intended activities and corresponding boundaries of the SME.

Examples of discussions that need to take place include governance issues, design issues, including functionality. It's difficult to comment on draft specifications for the AMI, and proposed legislation when the role/structure/boundaries of the smart meter entity are not known, especially when such broad language is used. The EDA would be pleased to participate in these discussions.

Although recognized in the media release and backgrounder for Bill 21 and the initial draft AMI specifications, though not the subsequent draft, the historical role of local distribution companies to own, install, operate and maintain the new meters is not entrenched in the legislation. The EDA believes that the historical role of the LDCs should be captured in the legislation in order to ensure that the business functions of LDCs continue to be protected into the future.

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There is significant concern that the current language of the legislation is far too broad and may lead to potential problems in the future; for instance, the bleeding of activities of other system participants such as the SME into the historical business area of the LDCs.

Further, a new section 28.3 in the Ontario Energy Board Act, 1998, would allow the Minister of Energy to issue directives to the OEB to amend licences of the SME, distributors, retailers, transmitters or the OPA. It would then be possible, under the current legislation, for

the minister to grant exclusive rights to the SME to carry out its activities and store smart meter data which would not recognize the participation of distributors.

Section 53.17 has provided much concern to various LDCs participating in smart meter pilot projects across the province, but I understand that was clarified this morning by the minister. The section requires distributors to not conduct any discretionary metering activities after November 3, 2005, unless the distributor has been authorized by a regulation, an order of the OEB or a code issued by the OEB or by the Electricity and Gas Inspection Act. Although the ministry has indicated that this section was meant to reduce the possibility of creating additional stranded meter assets, some distributors with smart meter pilot projects that have not been explicitly approved by the OEB or are above the approved cost levels are indicating that they may suspend their pilot projects. We understand that the ministry has tried to provide direct feedback to inquiries from individual utilities; however, a more general clarification would be greatly appreciated so we can relieve this concern.

Section 53.20 of Bill 21 gives the Lieutenant Governor in Council broad powers to make regulations on the smart meter initiative, including requiring actions by distributors with respect to the installation of prescribed meters for prescribed classes. This section allows the government, as opposed to the OEB, to determine how smart meters will be phased in. With respect, the EDA feels that the OEB may be in a better position to facilitate the phase-in process for smart meters since the OEB is seized with all financing aspects of the smart meter program and deals with the LDCs' rate applications and CDM activities.

Schedule B of Bill 21 proposes amendments to the Electricity Act to establish a smart metering entity. Among the objects of the smart metering entity set out in the proposed section 53.8 of the Electricity Act are the following:

"2. To collect, and to facilitate the collection of, information and data and to store the information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from distributors and, if so authorized, to have the exclusive authority to collect and store the data.

"3. To establish, to own or lease and to operate one or more databases to facilitate collecting, storing and retrieving smart metering data.

"4. To provide and promote non-discriminatory access, on appropriate commercial terms, by distributors, retailers, the OPA and other persons,

"i. to the information and data referred to in paragraph 2, and

"ii. to the communication system that permits the smart metering entity to transfer data about the consumption or use of electricity to and from its databases, including telecommunication equipment and technology and associated technology and systems."

Section 53.14 specifically authorizes the smart metering entity to "collect information and data relating to the

consumption or use of electricity from consumers, distributors or any other person" directly or indirectly. The smart metering entity is also authorized to "manage and aggregate the data related to consumers' electricity consumption or use."

Section 53.15 specifically obligates that "distributors, retailers and other persons shall provide the smart metering entity with such information as it requires to fulfill its objects or conduct its business activities."

As well, schedule C of Bill 21 proposes amendments to the Ontario Energy Board Act. The smart metering entity will require a licence from the Ontario Energy Board. In proposed section 28.3, the Minister of Energy is authorized to issue directives to the board with respect to conditions to be included in licenses issued by the board. Through such a directive, the minister can require the board to include conditions in licences that provide for the "circumstances in which the smart metering entity shall provide a person with access to information and data relating to consumers' consumption or use of electricity" that it has collected.

As a result of these proposed legislation changes, there is a tension between the object of the smart metering entity to provide non-discriminatory access to distributors, retailers, the OPA and other persons, on the one hand, and the minister's directive power to require the board to include conditions in licences relating to access to information.

As a starting point, information on a consumer's consumption and use of electricity is generated by the consumer but measured by a smart meter owned and operated by a distributor. Under the current regulatory regime, it is recognized by the board that the information belongs to the consumer. This recognition has not been carried through into Bill 21.

Furthermore, Bill 21 obligates a distributor to provide that information to the smart metering entity and imposes on the smart metering entity, as an object, a requirement to provide and promote a non-discriminatory access to that information by distributors, retailers, the OPA and other persons without any recognition of the fact that different classes of persons do not necessarily require that same kind of access to this information.

For example, a distributor requires specific meter information in order to bill its customers. A retailer, on the other hand, does not require customer-specific information but presumably would be interested in access to customers' specific information in order to be able to market products or services to individual customers.

Current rules under existing licences and codes issued by the board have recognized the existence of different requirements and interests as between the distributors and retailers. As a result of the requirement for non-discriminatory access in Bill 21, such a distinction no longer appears possible.

The problem can be solved by amending paragraph 4 of the proposed objects for the smart metering entity to make the non-discriminatory access subject to any conditions in the smart metering entity's licence relating to

protection of privacy; or amending paragraph 4 of the proposed objects of the smart metering entity to clarify that non-discriminatory access relates to access among members of a class of persons rather than access among classes of persons, as follows, "To provide and promote access on appropriate commercial terms by the OPA and other persons and by distributors, retailers and other classes of persons on a non-discriminatory basis to members of those classes"; and amending paragraph 5 of the proposed minister's directive power to include a reference to protection of privacy.

Non-discriminatory access on appropriate commercial terms: As mentioned earlier, section 53.8 requires the SME to provide non-discriminatory access to the data collected "on appropriate commercial terms" to distributors, retailers, the OPA and others. The notion of "commercial terms" suggests that fees may be charged to distributors to access data that they have provided. This may impede or discourage distributors from accessing data for other optional uses such as CDM research.

Conclusion: The smart meter initiative's success or failure will ultimately depend on a clear and common understanding of the responsibilities to be carried out by all players involved, including LDCs, the government, the ministry, the Ontario Power Authority and the Ontario Energy Board.

Overall, Bill 21 is a step forward for smart meter implementation and conservation overall. The province's electricity distributors are encouraged by the number of issues that are being addressed in the proposed legislation. Although a number of details in this legislation still need to be developed, the EDA and Ontario's distribution companies welcome the opportunity to work with the government and to participate in hearings such as today's committee hearing on Bill 21.

We have always advocated that by working in partnership with electricity distributors, government and regulators, we can all achieve the best conservation results in the shortest time possible. We already have a lot of utilities working on these programs, and we have results in excess of 100 megawatts that we can report from all of the utilities together. We need to increase that and get beyond the 5% and 10% targets that the government has put out.

I'd like to thank the members of the committee for your attention and consideration of some of the concerns and outstanding issues that the electricity distribution sector has as it relates to Bill 21.

The Chair: Thank you, gentlemen. We'll move to the government side, about two minutes each.

Mr. Leal: It's okay.

The Chair: The government passes. We'll now move to Mr. Yakabuski, then.

Mr. Yakabuski: Thank you for your presentation. First, I want to thank you for the time that your organization and yourselves have given myself and members of our caucus in trying to wade through the complexities of this issue—not just the smart metering, but the distribution of electricity in general. We appreciate that. We also appreciate your input on the bill.

It seems that, in general, you're accepting or possibly even supporting the smart meter initiative, with some reservations about some of the clauses themselves, particularly with regard to the role of the LDCs, and protection of that role and privacy of the metered party. Is that basically it?

Mr. Macaluso: We appreciate the government's intent through smart metering to introduce a conservation culture, and it's our intent to assist the government in implementing that culture. As we outlined in our presentation, for this to be successful, there are a number of issues that we feel can be worked out, but we do need to get them worked out before the legislation is finalized.

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Mr. Yakabuski: These are the suggested amendments?

Mr. Macaluso: That's correct, yes.

The Chair: No further questions, Mr. Yakabuski?

Mr. Yakabuski: That's good, thank you.

The Chair: Mr. Hampton, you have about four minutes.

Mr. Hampton: As I look at your brief, you make the point that "many of the design details of the smart meter system ... need to be determined"; you make the point that some of the definitions are "overly expansive"; and you make the point—if I can summarize—that much of this is still vague.

The government started talking about smart meters three years ago. Don't you find it a bit disturbing that, now entering the third year, any of the concepts of how this might work and who might control it are still very vague?

Mr. Angemeer: A number of things have advanced. I think there has been a lot of work done by electricity distributors to prepare the framework for things like a provincial RFP for meters. There has been a lot of co-operative work between the different distributors and the government to get that going, and that's very close to happening. There is probably a little less certainty so far about the smart meter entity and the data handling, but we are also working in groups with the government to try and get that put together as quickly as possible. So we're very hopeful that this will all be coming out very shortly, because to meet the government's targets we need to get on with putting meters in, making sure that the data's correct and making sure that the system works.

Mr. Hampton: I want to raise one of the privacy issues. This is mentioned in your brief where you point out that, with the smart metering entity, part of the issue here would be "to establish, to own or lease and to operate one or more databases to facilitate collecting, storing and retrieving smart metering data." Would I be right in surmising that whoever has control over this data would actually have control over something that could be financially quite lucrative, and that whoever has control over these systems would also have control over something that could turn out to be financially quite lucrative? You'd have detailed information about consumption habits; you'd also have the information system to literally

get into people's homes, not just for the purposes of electricity, but for all kinds of other marketing activities.

Mr. Angemeer: I believe the intention is to basically have that information available on an open-access basis so that distributors, retailers and other parties that need this information to carry out their business activities have that information that they need. One example is for distributors: We're hoping to have information that will allow us to run our distribution system better in terms of outage management, outage notification, load profiles on feeders and so on that will help us to run our business better. I'm certainly hoping that we won't have to pay extra for that information.

The Chair: Thank you, Mr. Hampton. If there's no disagreement, we'll give it to the government for one quick question.

Mr. Mario G. Racco (Thornhill): First of all, I want to say thank you to both the presenters, and particularly to Mr. Macaluso, who resides in the same city I do. Thanks for your presentation. But am I correct that you said that what we are doing in fact will assist the culture of conservation, that it will assist us in learning how to conserve, assist us in deciding when it's cheaper to use electricity or whatever, and therefore in the long term it's going to be a benefit to everyone in Ontario no matter their income or status or whatever?

Mr. Macaluso: The smart meter clearly has the potential to be the first real tool for the consumer to start to understand their electricity bill. So to the extent that that creates a culture of conservation, that's the intended objective of the policy. Certainly, we support putting that policy in place as quickly as we can, but we need a few things sorted out first.

The Chair: Thank you, gentlemen. We'll have to leave it at that. Thank you, Mr. Racco, as well to you, Mr. Macaluso and Mr. Angemeer, on behalf of the Electricity Distributions Association.

DIRECT ENERGY

The Chair: I would invite our next presenters, from Direct Energy. Sara Anghel and Marty Laskaris, please come forward. As you've seen, 20 minutes in which to make your remarks and any time remaining distributed amongst the parties evenly. I would invite you to please begin.

Mr. Marty Laskaris: Thank you to the members of this committee for the opportunity to attend today and present the view and perspective of Direct Energy.

Briefly, to give you an overview of Direct Energy's perspective, we are the largest non-regulated energy retailer and provider of related services in North America. We have over five million customers in North America. We provide energy, natural gas and electricity to a number of customers in several provinces in Canada and many states in the United States. In addition, in the state of Texas we also play the role of a regulated utility.

We are a competitive energy retailer in all the markets that we participate in. In Ontario, we have relationships

with approximately 1.2 million households that we service throughout the province, providing natural gas and electricity, as well as a portfolio of heating and cooling equipment, maintenance and repair services to those pieces of equipment, and support the installation of 1.3 million water heater installations across the provinces. In addition to the equipment that we provide, we provide a extensive portfolio of servicing warranty and plumbing protection plans.

To provide all of that service in the province of Ontario, we have the largest service workforce in Canada that is focused on energy use, high-efficiency equipment installation, maintenance and repair. As a consequence, we invest significantly and heavily in training, certification and accreditation of our workforce.

In addition to the retail side of our operation, we provide electricity generation and natural gas production, owning and operating approximately 3,000 producing and non-producing gas wells in Alberta and three natural gas-fired combined-cycle electricity generation plants in Texas. In addition, we've made an investment in a significant wind farm in Buffalo Gap in Texas.

With the opportunity to comment generally on the Energy Conservation Responsibility Act, we strongly support the initiative that the government has taken in this regard. We certainly support the area of conservation and energy efficiency as it relates to the opportunity to begin to improve energy efficiency levels in real property and believe that it is insightful that it has taken the opportunity to engage itself in an area of the transfer of real property from hand to hand, as most appropriate. We recognize that the challenge of moving efficiency and equipment and the performance of facilities in Ontario is significant and believe that this is a significant and material step in the process which makes significant logical sense.

We also support the setting of targets and objectives that require public sector organizations to prepare energy conservation strategies on a regular basis and are confident that it will ensure positive results. In addition, we support the advent and utilization of measurement and verification and validation criteria and plans in those plants.

Direct Energy is a strong proponent that it is best to allow the private sector to be fully participant and creative in developing creative solutions to energy conservation and energy efficiency programs. Establishing a performance-based and objective-setting environment versus a prescriptive one will ensure innovative programs which will deliver optimum results.

With respect to the involvement of the private sector in conservation in the province, we believe that competitive entities acting under ordinary commercial incentives are best positioned to deliver the benefits of technological innovation while assuming and managing risk. A primary commercial incentive for an organization such as ourselves is the opportunity to develop and continue a direct relationship with our customers. We further call for the examination and consideration of

harmonization of all efforts to encourage and stimulate energy conservation in Ontario by all consumers. By “all efforts,” we mean the consideration of tax policies and programs, incentive policies and programs, and energy efficiency equipment.

In soliciting the involvement of the private sector, we believe that setting objectives and targets is a strong incentive to bring strong consideration and ingenuity into the problem and the challenge that many facility owners and homeowners face as they wrestle with the increasing and variable costs of energy in this province.

With respect to smart meters, Direct Energy is an active market participant in the Ontario market and supports the move to implement advanced meter systems. In conjunction with appropriate pricing, consumers will have the information and tools to conserve. Direct Energy is an investor, a participant and a stakeholder in the deployment of smart meter systems in this province.

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Smart meter implementation, we believe, should be designed and deployed to leverage ratepayer investment by facilitating entry and ongoing active participation by competitive providers of value-added products and services. In particular, we believe that a straightforward smart meter should allow for the addition of peripheral devices and functionality. We believe that a smart meter of this type would be cost-effective, would limit technological and financial risk and would allow additional investment or risk assumption by smart meter users and their energy service providers.

We believe the ratepayer-funded part of the smart meter system should include the meter and one-way communication to deliver the data from the meter to the utility's billing engine. Any additional functionality should be developed and deployed on a competitive basis.

With respect to demand-response initiatives, Direct Energy, as represented here today, has been designing and implementing demand-response products and systems for businesses and institutions for a number of years. We believe it is a quick step and a short step to develop demand-response products and services to implement in the home and deploy on a mass scale. Many of the projects and pilots are well under way, and Direct Energy is participating with several LDCs on SMS pilots.

Direct Energy applauds the clarity of the legislation in defining the role of the LDCs in relation to the smart meter system, and we support the translation of this clarity in the upcoming regulations.

We believe and support the concept that smart meter data belongs to the customer. We also believe that all recognized market participants require unfettered, near-real-time access to data in order to optimize the investment the province and all ratepayers are making in smart meter systems in Ontario.

In conclusion, we are in strong support of the Energy Conservation Responsibility Act. We support the direction that it is taking and the task it is clearly laying out.

We encourage government to continue to establish and support an environment in Ontario that fully engages competitive energy service providers to leverage smart meter systems and other conservation initiatives and investments. As a consequence of setting that environment, we believe that consumers and competitive entities will collaborate and co-operate to deliver innovative, efficient and cooperative conservation initiatives, ultimately stepping towards the achievement of the objectives of the province.

We also strongly believe there should be serious consideration for review and harmonization of all efforts to encourage and stimulate energy conservation in Ontario by all consumers. We also believe that energy prices must reflect true costs in order to motivate consumers towards conservation.

Thank you, Mr. Chair and members of this committee, for the opportunity to comment. We will continue to welcome the opportunity to participate in the ongoing process as this process moves forward.

The Chair: Thank you for your presentation. We have about four minutes each. We'll start with the Conservative side.

Mr. Yakabuski: Thank you very much for your presentation today. We don't have a written submission for you, so it's a little harder to make notes sometimes and follow along, because we tend to listen all day. We sometimes lose our train of thought here.

You used the comment a couple of times about the direct relationship between consumers and entities, hence, I suppose, the name Direct Energy. But in general, it would appear that you're in support of the legislation. Certainly, we all support the principle of conservation because it's going to be an integral part of solving the energy situation that we find ourselves in here in Ontario. I don't have any direct questions because you didn't propose any amendments to the legislation in your submission, but I do certainly thank you for joining us today.

The Chair: Thank you, Mr. Yakabuski. We'll have five minutes each, then, beginning with the NDP.

Mr. Hampton: Have you seen any cost estimates for the installation of a smart metering system province-wide?

Mr. Laskaris: I have seen some very high-level cost estimates, yes.

Mr. Hampton: What are those cost estimates?

Mr. Laskaris: I don't recall the cost estimates. I saw them in general and not in the context of possibly the way you're asking the question.

Mr. Hampton: As I understand it, the energy board has said capital costs of over \$1 billion and annual operating costs of \$50 million. Does that sound right to you?

Mr. Laskaris: I can't comment on that.

Mr. Hampton: There are other folks who have looked at this and said that the cost will likely be \$1.5 billion to \$2 billion in range; that when we are dealing with something as large and as complex as this, you could be

looking at \$1.5 billion to \$2 billion. Do you think that's out of order?

Mr. Laskaris: I cannot comment on the cost. Our position, Mr. Hampton, is that by making sure that the most simple and straightforward system, beginning at the meter, is what is installed, much of the cost or effort required to optimize the effectiveness of the SMS system in Ontario can be borne by the private sector as an investment.

Mr. Hampton: Have you seen any cost-benefit analysis of smart meters?

Mr. Laskaris: I have seen information that draws a direct relationship; that providing information to a consumer in a real-time context can alter behaviour and ultimately have consequence on demand or consumption patterns.

Mr. Hampton: But have you seen any cost-benefit analysis?

Mr. Laskaris: I have seen no direct cost-benefit analysis.

Mr. Hampton: In your line of business, would you make a \$1.5-billion to \$2-billion investment without ever seeing a cost-benefit analysis?

Mr. Laskaris: No, we would not.

Mr. Hampton: This is what I find troubling. I looked at the experience in California. When they did their pilot projects, they estimated they would save about 500 megawatts. When they looked at it in retrospect, they managed to reduce electricity consumption by about 31 megawatts. So their conclusion was that, as a technology, the returns didn't measure up to the cost. I hear the government's been talking about this for three years now. I recognize it's going to be a substantial amount of money and yet I haven't seen a cost-benefit analysis. Don't you find that troubling?

Mr. Laskaris: We are supportive of actions to provide information in a real-time basis and in the investment to do that, in concert with other programs that will elicit and support investment in higher-efficiency equipment, as well as providing real-time—

Mr. Hampton: You know what? I've heard from other companies here today that are very supportive because, as I read this legislation, companies stand to make a fair amount of money out of this. Whoever controls the information system will make a fair amount of money. Whoever ultimately gets the smart meter contract stands to make a fair amount of money. Whoever can then take this data, this information, and use it and sell it for other marketing purposes stands to make a fair amount of money. I'm not surprised that companies that are in it for a profit would support this. But don't you find it troubling that this could be an investment of \$1.5 billion to \$2 billion and yet no one has come up with a cost-benefit analysis?

Mr. Laskaris: I can't provide comment on why the government has not provided a cost-benefit analysis.

Mr. Hampton: And neither can the government.

The Chair: Thank you, Mr. Hampton. We have about six minutes left for the government side.

Mr. Leal: I want to thank Direct Energy for your presentation today. I was interested; sometimes pilots can provide great data and predict future behaviour. You indicate in your presentation that Direct Energy has had a number of pilots with municipalities through their LDCs, through municipally owned operations. If you could go through a few of those, I'd like to hear some of the details of those pilots, and locations where they've been held.

Mr. Laskaris: We're participating in a small pilot in the area of Veridian, where smart meters are being installed. We're taking on the role, as we are in the marketplace, of the retailer to see the impacts and determine the impacts of providing, in a smart meter context, response and behaviour etc. We plan on participating with a number of other pilots, which are not finalized yet, so I really can't comment on them.

1400

With respect to the implementation of smart meter pilots and the advent of in-home or in-business display, with response to certain pricing signals to determine behaviour and what displays may be appropriate in order to communicate that to homeowners, and then from that perspective also as a retailer, we're looking at possible impacts and implications for us as a provider of electricity and natural gas in the province.

Mr. Leal: Have you been following the activities at all in Chatham-Kent, which is probably one of the major pilot projects for smart meters?

Mr. Laskaris: Yes. I'm only lightly familiar with them, but our company is following the progress in that particular area.

Mr. Leal: I have seen some information that certainly indicates that for every \$100 that you invest in smart meters, your return is \$150. Have you seen some of that same information?

Mr. Laskaris: I have not seen that information.

The Chair: Any further questions on the government side?

Ms. Mossop: We were mentioning earlier that in a recent discussion we were having with regard to water supply, there was great pushback on the idea of putting meters in—just ordinary meters—to measure people's usage of water. Yet, in fact, when jurisdictions did this, they would realize about a 75% drop in water usage just because people were now aware of what they were using. Would you see the smart meter as a refinement of that sort of basic technology, to give them that kind of tool, that kind of information?

Mr. Laskaris: Yes, generally, we would. Our understanding of a pilot in Woodstock, a movement toward a smart meter, providing more information on a real-time basis in the context of homeowners by prepaying and therefore having a greater awareness and consciousness of the power they're consuming, has resulted in significant power savings. So it would be consistent with—and that's why we believe in the premise that providing information in real time will have a significant impact on

behaviour, certainly in demand profiles and ultimately in consumption.

Ms. Mossop: In your experience, are people driven to conserve energy because of a sense of social conscience and responsibility or because they can save money?

Mr. Laskaris: I think the answer is yes to both. We have customers who are driven by a strong conservation ethic; we have customers who are driven by economics—our business customers are driven by economics. That's why we're supportive of this two-pronged effort to enact legislation in schedules A and B of the act.

Ms. Mossop: Would it be fair to say that there may even be a generational difference in those who see conservation as more of a social issue than just a money issue? I'm thinking about people who have actually survived or experienced real crises, where rationing might have been the mode of the day, whether it be a depression or a war, whereas there are many generations who have almost a sense of entitlement to these resources and don't have that same sense of conservation and responsible use of our resources.

Mr. Laskaris: I have not seen evidence, nor have we developed evidence to that effect, but it certainly makes very good sense to me that someone who has been pre-sensitized to this has a greater awareness and consciousness of the use of energy.

Ms. Mossop: Hence, the need to nurture a culture of conservation and to really do education around that.

Mr. Laskaris: Absolutely; education plays a critical role.

Ms. Mossop: So that we can all benefit as a collective.

Mr. Laskaris: Absolutely.

The Chair: Thank you, Ms. Anghel and Mr. Laskaris, for your deputation on behalf of Direct Energy.

RENTERS EDUCATING AND NETWORKING TOGETHER

The Chair: I now invite now our next presenter, Ms. Mary Pappert from the Renters Educating and Networking Together, RENT, and company. Ms. Pappert, as you've seen, you have 20 minutes for your presentation, with remaining time distributed evenly amongst the parties. Your time begins now.

Ms. Mary Pappert: Thank you for the opportunity to present our concerns today. My name is Mary Pappert and I'm here to represent a Waterloo regional group called RENT. I'm joined today by Gay Slinger, a RENT colleague.

We're here to express the concerns of our tenants with regard to smart meters and the possible consequences to our tenants with regard to sub-metering systems if they're imposed in rental units.

To clarify, RENT is an acronym for Renters Educating and Networking Together, and we are a volunteer, proactive, non-partisan group of concerned citizens who seek to improve the state of tenants in the region of Waterloo, through education, organization and general representation.

RENT believes that every responsible tenant has the basic human right to shelter that is safe, secure and affordable. We have several hundred members throughout the region of Waterloo, and if you need more clarification on RENT, you will find an Appendix A that gives you a little more information. I won't take the time to do that now.

Our issues, our concerns: Energy conservation, smart meters and sub-metering were the topics of our RENT annual meeting in October 2005. While all our members agree that energy conservation is a vital issue, they expressed concern regarding the costs involved in the implementation of the system and the tenants' inability to control consumption in their own energy-deficient units. This issue was of particular concern to one group of our members because their landlord installed smart meters or sub-meters in their apartments during the summer, and then in September they were informed that they would receive a rent reduction and their hydro costs would be downloaded to each unit as of October 1. I think you'll find in your package a letter from Beacon Towers, the group we're talking about from Kitchener, and there's more detail there. No mention was made that the Tenant Protection Act allowed the tenants the right to refuse this change in their tenancy agreement.

After researching smart meters, considering the possible implementation of sub-metering in rental units, and discussing the issue with our members, RENT believes that in every rental situation, tenants have neither the means nor the authority to make the truly meaningful conservation changes required in their units. They cannot upgrade insulation, make structural replacements or repair drafty windows and doors. They can't repair or upgrade the heating system, they can't install programmable thermostats and they can't replace old appliances with new energy-efficient models. They don't have the authority to do that, nor do they have the finances.

The government's proposal to shift rapidly rising energy costs to tenants penalizes Ontario's lowest-income residents. Imposing increased energy costs on tenants through individual meters threatens the affordability of basic shelter for low-income tenants, while ignoring the big conservation gains that could be made if landlords upgraded the energy efficiency of the buildings over which they have control. By turning off a few lights, doing laundry at night or sitting in cold rooms, tenants' energy savings are minimal, and they're of very great concern to seniors and people who are home all day.

Allowing the landlord to download hydro costs to the tenants removes all the financial incentive for the landlord to improve the energy efficiency of the building or to retrofit the individual units. That would affect conservation throughout the whole building.

Landlords who provide energy-efficient appliances, fixtures and light bulbs, who caulk openings to prevent drafts and who provide sufficient, efficient heating units and water heaters could create true energy conservation. That's what we're looking for. Upgrades such as these would remove two of the biggest energy-guzzling appli-

ances frequently used by tenants. I'm talking about old refrigerators, and heaters bought to supply heat in apartments that are drafty and cold, and they are guzzling.

Regarding smart meters and the downloading of energy costs to tenants, there is no guarantee that conservation can be achieved with this method. The questions tenants ask and the issues that RENT addresses to the members of this committee are these:

How will the landlord calculate a rent reduction? The Tenant Protection Act requires a rent reduction if a service is taken from the tenant. How will they determine it? Will the rent reductions be determined simply on a square-foot basis or will the differences in location, the needs of tenants and the number of occupants be taken into account in these calculations? Is it a north- or a south-facing unit? Is it a corner unit or nestled away from outside walls?

What are the tenant demographics? Are tenants working outside the home daily or living in Florida for extended periods of time during the winter? Are the tenants retired people or parents at home with children who require more hydro usage because they're home all day? Should these people pay more?

Is the building electrically heated? How many appliances are there and what is the age and efficiency of the heating appliances provided by the landlord?

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If sub-metering is allowed, how much will the sub-metering company charge for its administrative fees? These seem to be quite exorbitant. What controls are in place for sub-metering and for any future fee increases? To my knowledge, there are no controls at this point in time. They can increase it whatever they want.

What other costs of the landlord are being downloaded to the tenants, such as a share of the non-commodity fees assessed to the landlord by the local utility or amortized cost for the actual installation of sub-meters? Will the landlord pay for these costs? There was one 110-unit in Toronto, I believe, and the sub-metering company itself provided the data. They indicated that 41% of the tenants were paying more, 12% were breaking even and 47% were paying less. But there was no analysis provided as to the reasons why these things happened.

What about compliance with the Tenant Protection Act, 1997, which specifies that tenants have to consent to any unilateral change in their rental agreement? Some landlords use very aggressive, intimidating language and tenants believe they have no choice but to accept, or otherwise lose their hydro service. The quality and veracity of the information being provided by some landlords is highly suspect to us; for example, the savings that might be realized by sub-metering and the level of energy efficiency that currently exists.

RENT recommends that the provincial government not consider any changes to the Tenant Protection Act that would permit unilateral imposition of sub-metering on tenants.

What about contract law? Allowing landlords to impose this change to the tenancy agreement of sitting

tenants breaks the fundamental rule of contract law that one party to an agreement cannot unilaterally change that agreement. Neither party of a contract is allowed to unilaterally change a contract without honest disclosure and consent by both parties. Where a service, facility, privilege, accommodation or thing was provided in accordance with a previous agreement, it would be unreasonable, given the nature and control available to the tenants, to remove this service.

To conclude, let's consider the issues from both sides, and ultimately, as landlords would, look at the bottom line.

Rental housing is a business. Landlords are owners and they alone control the operation and maintenance of the buildings. Tenants have no control over the facilities.

Conservation is a goal for landlords and tenants alike. Tenants must try to conserve electricity as much as they are able; however, real conservation will be found in the major ticket fixes that only the landlord can provide. ACTO has provided an excellent One-Tonne Challenge checklist that would give you details on that.

The upgrades the landlord can make constitute a reasonable approach to energy conservation and put the onus on the only party capable of achieving this goal, the owner of the building and benefactor of this action, by the improvement of his investment: the landlord.

What about rising energy costs and the cost of doing business? Landlords are now allowed annual guideline rent increases by the Ontario government. These increases are based on seven basic issues, one of which is energy consumption. Therefore, the landlord now receives an annual rent increase for this service. The amounts compound annually once they get them and they compensate the landlord. The quality of the landlord's business acumen, their foresight in building maintenance, and the service provided to their tenants determine if the landlords retain good tenants and benefit from the profits accumulated for their business, not the shifting of expenses to those who have already been compensated.

RENT recommends that to conserve energy in rental units, landlords should be required to have full comprehensive energy audits done in their buildings and the recommendations arising from these audits should be implemented.

Basic maintenance issues are easily accomplished without delay. Caulking windows, doing minor things to cut down on drafts are easily done. It's true that the cost of upgrading insulation and appliances can be an excessive financial burden for some landlords, and perhaps the government should provide financial incentives to assist landlords in achieving energy efficiency, and safeguard the tenants, who have no control over the living conditions and can be excessively penalized by increasing energy costs.

We say that you should solicit the co-operation of the tenants with regard to the facets of conservation of energy. It has been shown that most tenants appreciate and co-operate with recycling. They do it in all the apartments. So by meeting with the tenants and asking for

their co-operation, landlords can effect good results. Energy providers can supply informational literature to educate the tenants.

I thank you for your attention and for listening to the concerns of the Waterloo region. I'd be happy to answer any questions you have.

The Chair: Thank you, Ms. Pappert.

We'll have approximately three minutes each, beginning with you, Mr. Hampton.

Mr. Hampton: Thank you for a very informative brief. You point out over and over again that tenants, because they don't own the building and don't control things like insulation, the heat system etc., are not positioned to, in effect, put in place much that's going to produce energy efficiency or energy conservation. Yet government wants to place a significant financial burden through sub-metering and the costs of sub-metering on to tenants.

Does this make any sense to you? If landlords are the people who control how the building is insulated, how the building is heated, whether or not it has energy-efficient windows, whether or not it has energy-efficient appliances, what could possibly be the motivation for putting so-called smart meters and smart-meter sub-metering on to the almost 1.4 million tenants?

Ms. Pappert: Money.

Mr. Hampton: Can you explain?

Ms. Pappert: If the landlord can download the cost of energy, and energy costs rise rapidly, the landlord no longer has to pay for it; he isn't concerned. Also, he has no incentive to do any of the things to make the building energy-efficient. If tenants should change some structural part of their apartment, they can be charged.

Mr. Hampton: Let me suggest another rationale for you. As I've read more and more of the literature, it seems to me that the actual cost of smart meters will be more in the \$2-billion range. If you only do smart metering in single-metered residential units, the cost per unit is going to be fairly significant. It's going to hit people on the hydro bill. But if you spread it also to tenants, even though tenants are not going to be in a position to implement a lot of energy efficiency, energy conservation measures, you can thereby reduce the cost on the monthly bill across the board. In other words, I think the government knows it's not going to get much out of tenants on this, but it becomes a way of spreading the cost of smart meters. In this case, it will be spread on to people who frankly don't have the money to pay.

Ms. Pappert: That's absolutely right. From what we understand, with the building that was done in Kitchener each sub-meter that was put in—and we've heard several prices. We heard \$600 per meter, and the cost of this would be applied to the tenant within the bill they get for their sub-metering. It's amortized over a 20-year period, so the tenant is paying for the piece of equipment that's charging them.

The Chair: We'll move to the government side.

Mr. Leal: Mary, I want to thank you for travelling all the way from Kitchener to be with us today. You've provided us with a very thoughtful presentation.

I just want to get to the Ontario Tenant Protection Act for a moment. It would seem to me that you and your colleagues would like to see some clarification on that particular issue.

Ms. Pappert: No. The Tenant Protection Act is clear right now but they can't change it. We just don't want it changed.

Mr. Leal: That's what I was getting at.

Mrs. Gay Slinger: If I could just interject there.

Mr. Leal: Sure.

Ms. Pappert: Legal advice.

Mrs. Gay Slinger: If I could just interject—as a colleague of RENT, I know I'll have a chance later—yes. Any effort to make the Tenant Protection Act even clearer than it is with respect to the non-imposition on sitting tenants in particular by sub-metering would be very much appreciated.

Mr. Leal: Clarity would be very helpful.

Mrs. Slinger: Clarity is always helpful.

Mr. Leal: That's the point I was trying to get at. Thanks so much.

1420

The Chair: Are there any further questions from the government side, Mr. Leal?

Mr. Leal: Would your group, RENT, have any suggestions on amendments that we could look at and see if we can utilize?

Mrs. Slinger: From RENT's standpoint, as Mary has indicated, the real concern is sub-metering, and it's born out of a number of local issues where sub-metering was attempted to be imposed on tenants. As we see the current legislation, it appears that although sub-metering is not specifically dealt with in the legislation itself, there is room to deal with it by regulation. We are concerned that that, in fact, is where it's going to be dealt with. So we very much don't want sub-metering imposed on sitting tenants. Mary's other issues—I'll address them further as well, later—are that there is a real concern with the rental housing market being involved in this rollout of smart meters at all, simply because of the lack of ability to effect meaningful conservation by downloading those particular kinds of costs to tenants.

Mr. Leal: You're right, one of the difficulties with enabling legislation, which this is, is that as you get to the regulations, the devil is in the details.

Mrs. Slinger: I guess we would say no sub-metering and don't involve the rental housing stock in the spread of smart meters.

Mr. Leal: Has your group in Kitchener had discussions with your LDC? Some LDCs across the province—I use my hometown of Peterborough as an example, with the electric storage heaters, which is a very innovative solution essentially to help low-income people. Any discussion?

Mrs. Slinger: I understand there are programs that are available through some of the local utilities. I will say that at our annual meeting, which Mary mentioned, there was a gentleman from one of the local utilities—neither Kitchener nor Waterloo, actually, but out in the town-

ships. He was quite astounded, I will say, at what he heard that night with respect to the ability of the sub-metering company to charge fees and what they were able to do that he, as a utility, was not able to do. He was astounded. I know he took that back to his colleagues. That certainly is a concern.

The Chair: We'll move now to the Tory side. Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation. I don't think any of us would disagree with the noble intent of conserving energy, and I would not impugn any different motive from the RENT group.

I'm also aware that submetering has been a huge issue. I think it is important how it's implemented, how it's shifted. Unless people are motivated sometimes—the intent of the smart meters, as I understand it, is to shift demand, encourage conservation and move peak demand. How it's implemented is something you've raised here today. They made a couple of promises during the election and maybe broke them. I'm not confident. As Mr. Leal said, the devil is in the details, and that's what I'm worried about with this bill.

I would only put to you in a question—because this is all recorded—you're not against trying to implement a fair and reasonable approach to renters paying a fair and reasonable portion for the utilities they use, are you? You've got to recognize that somebody is paying. If they've got the bill and they go to the rent review commission and they say, "Our cost for energy has gone up 30%," there has to be some connection between the actual consumer who is using that inefficient old space heater; there could be other ways of giving them credits for buying more efficient—you are part of the solution, and I'm wondering how best to establish that relationship. You are part of it; the person in the apartment is using it. Whether the windows are bad, as Howard said, or they're using poor appliances—those should be dealt with in the implementation, an audit being done before it's implemented. Tell me that you're not completely opposed, because really, you are using the electricity.

Ms. Pappert: We are definitely not opposed to conservation. We're very much aware of it. As an educational group, we'd be glad to help educate tenants in the way to utilize it. However, annually, in the guideline increases, one of the seven components is energy. It's calculated annually, and then it's compounded over the years. As far as using heaters is concerned, if the landlord supplies proper heating, they don't need them.

The Chair: We'll leave it at that. Thank you, Ms. Pappert, and your colleague, from whom we'll be hearing shortly on behalf of Renters Educating and Networking Together.

PEMBINA INSTITUTE

The Chair: I now invite our next presenter, Mr. Mark Winfield of the Pembina Institute. As you've seen, Mr. Winfield, 20 minutes to make your presentation; the time remaining distributed evenly among the parties. We'll

have that submission distributed by the clerk and assistant. Otherwise, I'd invite you to please begin.

Dr. Mark Winfield: Thank you, Mr. Chairman. The Pembina Institute is a national, independent, not-for-profit energy and environmental policy, research and education organization. We were founded in 1984, and now have offices in Toronto, Ottawa, Calgary, Edmonton and Vancouver. We welcome the opportunity to address the standing committee on justice policy on Bill 21, the Electricity Conservation Responsibility Act. The Pembina Institute supports the principle that underlies the goals of Bill 21, which is to improve the energy efficiency of the Ontario economy. We do have some specific concerns with the content of the bill, and then I also want to make some more general comments around energy efficiency issues in Ontario.

Schedule A, section 3 of the bill would permit the Lieutenant Governor in Council to designate goods, services and technologies, to remove any restriction imposed by law that would restrict their use. We understand that this provision is well-intentioned. I think the intention is to allow restrictions on the use of energy-efficient goods, services and technology—an obvious example being municipal bylaws against outdoor clotheslines—to be set aside. However, the drafting is rather broad. It does not seem to take into account the possibility that in some cases the restrictions may be in place for valid health, safety or environmental reasons. Therefore, we're recommending that a clause should be added to schedule A, section 3, stating that in designating such goods, services or technologies under the section, the Lieutenant Governor in Council should have due regard for the protection of public health, safety and the environment.

Schedule B deals with the smart metering entity. It provides for the creation of the entity for the purpose of implementing the smart metering initiative. We are somewhat concerned about the lack of clarity regarding the institutional form that the entity is supposed to take. Really, the form should be clarified, before the legislation is enacted, around its role and powers. At the moment, it's kind of a multiple-choice provision.

We also note, among other things, that the entity is to be provided with very extensive powers to gather information from individual households and businesses, but at the same time, the bill is silent on issues of privacy and sets no limits on what the entity can actually do with the information. Similarly, there are no provisions regarding access to information with respect to the entity. Therefore, we're recommending that the smart metering entity be designated as an institution for the purposes of the Freedom of Information and Protection of Privacy Act.

We've also noted that, as the entity would not to be an agent of the crown, the auditor, the Ombudsman and other legislative officers would have no jurisdiction with respect to its operations. We're recommending that the Provincial Auditor be identified as the corporate auditor for the smart metering entity, to provide some additional oversight.

More generally, we note that Bill 21 provides the basis for some components of an overall energy efficiency

strategy for Ontario, but we remain seriously concerned about the province's lack of overall progress in the area of implementation of actual actions to improve the energy efficiency of Ontario's economy and society. These concerns were highlighted in the study that we published in conjunction with the Canadian Environmental Law Association in December, which reviewed Ontario's progress in the areas of energy efficiency, low-impact renewable energy sources and the replacement of coal-fired generation. A copy of the study is attached to our brief for your information.

One of the things we've noted is the overwhelming emphasis on new generation when one looks at where the government has actually been making financial commitments. By our estimation, the government, over the last two years, has committed approximately \$10.5 billion to new supply and, by contrast, only about \$163 million to conservation. If you work that out, it comes out at a ratio of about 64 to 1 on supply over conservation.

In our view, the progress which is occurring is simply too slow, particularly in the area of end-use efficiency. We know from previous work that we've done with Simon Fraser University, and indeed work that others have done, that there is a major opportunity to cost-effectively reduce future peak electricity demand—by some estimates by as much as 50% against business-as-usual projections—over the next 15 years. We're simply not seeing enough action to realize that potential.

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In our view, the province needs, in addition to some of the things in Bill 21, to move rapidly on updating the standards under the Energy Efficiency Act. It needs to be moving on revisions to improve the energy-efficiency requirements in the building code and to expand its use of market incentives, such as innovative financing mechanisms for energy-efficiency investments. It needs to complete the process of establishing a standard offer contract system for low-impact renewable energy sources and cogeneration. Generally, there continues to be a need for clarification of institutional roles and responsibilities, particularly around energy efficiency and the resolution of a number of technical and grid integration issues for small-scale generators.

Thank you. I'd be pleased to take questions.

The Chair: Thank you very much for your remarks. We have a very generous time, five minutes each, and we'll begin with the government side. Mr. Leal.

Mr. Leal: I want to thank you for your very detailed presentation and some options that are certainly worth consideration and further analysis. I'm always interested in the LDCs, the local distribution companies. I think most municipalities—there are some that were unwise. Cornwall, of course, was one that sold off their municipal electric system. I think they got about \$18 million for it, a one-time cash injection, but they don't have the steady stream of revenue that other wisers, I think—when they were doing the reviews.

Mark, what's the role for LDCs? How do you see them playing an ongoing role, provided sufficient finan-

cial resources can be delivered to LDCs? That would be my first question.

Dr. Winfield: I think the local distribution utilities have potentially a huge role to play in the delivery of energy-efficiency programs. We're seeing some of the leaders who are starting to do that. Toronto Hydro is probably the one that's most in the forefront at the moment. But they do make sense as the vehicles for delivery of programs. They've got direct relationships already with their own customers. They're well set up to do this. They're starting to build up a body of experience. Those that don't actually have capacity themselves to do service delivery around energy efficiency can contract with non-governmental service providers—Greensaver here in Toronto is a very good example of that; there's an equivalent one in Ottawa—that do things like the home energy efficiency audits and that sort of thing. So they're extremely well positioned.

I think there's some concern about the degree to which they're taking up the arrangements which were made around the fee structures that are approved through the energy board to be able to invest in energy-efficiency programs. There may need to be a little bit more of a push from the government to get them moving on this, and a bit more technical support as well, especially for the smaller ones. For the city of Toronto, or Toronto Hydro, there's considerable institutional capacity there to do this and design programs and deliver them. Once you're into rural areas or smaller communities, you may not have that sort of capacity within the utility, and we need to think about ways of providing that capacity for them to deliver programs.

Mr. Leal: We're now looking at the idea of standard offer contracts. What's Pembina's view on that particular initiative?

Dr. Winfield: Our view has been that the standard offer contract mechanism has been extremely effective in other jurisdictions as a way of bringing about rapid development of low-impact renewable energy sources. It has been the key instrument in places like Germany and Spain, where we've seen the large-scale expansion of wind power, for example. It also makes a lot of sense from the viewpoint of trying to get cogeneration happening as well. So not just renewables, but also in work that we've done and other people have done, considerable potential has been identified for cogeneration in commercial institutional buildings—like the university across the way—to do cogeneration. But they need incentives, and the standard offer contract is one of the ways that you can clear up a lot of the transactional costs that they'd otherwise be faced with in terms of offering something into the market.

Mr. Leal: If I could continue just in a similar vein, have you looked at any sort of specific manufacturing or industry groups with regard to standard offer contracts in terms of cogen and the impact that a standard offer contract would have in order to sustain a particular area of commercial activity or manufacturing?

Dr. Winfield: There's obviously potential, because what you're doing in effect is you provide a revenue

stream to the industry. So in an area like forestry, for example, you encourage them to use their existing boilers and generating capacity to sell into the grid. You're actually giving them a revenue stream. We've not done analysis down to specific economic impact on those sectors. We did a little bit of modelling which sort of gives some impression, which suggested considerable cost-effective potential in areas like petroleum refining. We've done some work there. Also, the one that came through really strongly, surprisingly, in the work that we did, was commercial-institutional: large office buildings, which have the potential to install—some of them already have standby generators in place—cogeneration capacity, particularly with new technologies like micro-turbines that are coming into the marketplace. There's some considerable potential to contribute to the overall supply situation somewhere, like downtown Toronto.

Mr. Leal: What's your feeling on the idea of a ratio between new supply and conservation—you've already indicated the current situation—from your expertise and activity in this area?

Dr. Winfield: We've indicated in the modelling we did that we feel there are cost-effective and technically feasible opportunities to reduce projected grid demand by something in the range of 40% relative to the projected business-as-usual case. There may be a potential for up to another 10% through demand response load-shaving off the peak. Our view is that there needs to be a much stronger emphasis on the conservation side relative to the supply side.

The Chair: We'll have to leave it at that. Thank you, Mr. Leal. We'll move to the Tory side.

Mr. O'Toole: I appreciate, Mark, that your group has done a lot of work on this over the last number of years. I appreciate your expertise and your perspective on the issue, and I'll ask a very simplified question, I suppose, in a very complicated area. This sort of a demand management initiative, technically—when I look at the profile of energy consumption, the residential side is probably 30% of the consumption side. There's a role to play for conservation, but the discretionary role of consumers is quite small: 1,000 kilowatt hours a month, probably. There isn't a lot of it that is discretionary. There's some waste, having the house too warm or too cold and maybe an old bar fridge, but that's a very small piece. It's a huge \$2-billion investment primarily aimed at that group.

I'd like you to comment on that, whether that's an efficient investment, or is there some other strategy promoting and initiating conservation and renewables? I'm not opposed to the net metering debate, the standard offer contract debate, allowing people who have wind or solar or whatever to get back on the grid, to get some money for it. This thing sounds to me like somebody will get a hold of the contract—\$2 billion—and once they've got it, they're going to have the administrative minutiae—I put to you that this is one of the bigger boondoggles of recent time. It really isn't a smart meter. There is nothing smart about what I've read in this. It's really a demand man-

agement tool to tell consumers to turn off their heat at night. Why don't they just send them a memo—it would cost them a stamp—to get rid of the bar fridge? Give them a credit.

To me, this is a big public sector boondoggle of about \$2.5 billion. It's dealing with a third of consumers, it's dealing with about 10% of those consumers' flexibility, and yet there are bigger issues. They're not really telling the whole truth about this. They can't cancel the coal plants; the IESO told them that. They're going to put a gas plant in Toronto, despite what David Miller says. I have serious concerns, but I'm looking for whether this is a good investment of \$2.5 billion or is there more that they can do?

Dr. Winfield: There are a lot of complex questions in that question.

Mr. O'Toole: You have a Ph.D., so I know you know the answer.

Dr. Winfield: I think what you're asking is whether the smart metering initiative makes sense. There are arguments either way. One can argue that the actual potential for load-shifting from the residential sector is limited, that you may well get a larger response or a larger impact on overall demand by doing things which actually try and improve end-use efficiency. So replacement of less efficient appliances, getting rid of electric space heating, improvements in lighting, electric ranges and getting rid of electric hot water heating are things that we've identified as likely being cost-effective that way.

There is some potential in the industrial sector around demand response. You can do it without quite such an elaborate sort of system, which helps generally in terms of—I mean, there are certainly advantages in the short term, from a system management perspective, to being able to shift load off peak. There's no doubt about that.

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Mr. O'Toole: On the industrial-commercial side.

Dr. Winfield: Yes, and generally. If you can shift the peak somewhere, it helps somewhat with the system management.

Mr. O'Toole: Just tell people they can't cook their supper at 4:30 anymore, or 5 o'clock. Just tell them.

Dr. Winfield: Again, there are complexities in the sense that one could argue—and I'm just putting ideas on the table—that the smart meter may perform functions in addition to simply attempting to get a behaviour shift change in terms of time of day.

Mr. O'Toole: But it's not wireless. It's not programable.

The Chair: I'll have to intervene. Thank you, Mr. O'Toole, for your questions, and I would invite now Mr. Hampton. You have about five minutes.

Mr. Hampton: I want to thank you for your submission, and I want to deal with some of the issues that you raised specifically in your submission. On page 2 of your submission, you point out, "Among other things, the entity"—meaning the smart meter entity—"is to be provided with extensive powers to gather infor-

mation from individual households and businesses,” but there is no protection of privacy. There are no limits on what the entity can do with this information.

I just want to suggest to you that in the framework of this, whoever has this information probably has information that is of significant commercial value. In other words, you can use this information for all kinds of marketing tools and you can make a hell of a lot of money out of this information. Is that a fair assumption?

Dr. Winfield: I think that’s probably a fair assumption, that the information that the entity, whatever form it takes, would gather would probably have some potential commercial value.

Mr. Hampton: We’ve seen recently with some of the things that have happened on the stock market that when you create opportunities for corporations to make all kinds of money, you need to put in protection of people’s privacy. Doesn’t it really strike you as bizarre that there’s no privacy protection here, since this is my information about my household or my business? Doesn’t it strike you as a real clanger that there’s no protection of privacy and how this information can be used?

Dr. Winfield: It’s odd, and I don’t know whether to attribute it to oversight or design. There’s an unclarity in the legislation that I’ve highlighted about even what the institutional form of the smart metering entity is supposed to be. So one wonders how much is simply left out. But on this particular issue, I think there’s a relatively simple solution, which is simply to designate whatever the entity turns out to be as an institution for the purposes of the Freedom of Information and Protection of Privacy Act, and that would resolve a whole bunch of issues around this in one tidy way.

Mr. Hampton: The other point you make is that the Provincial Auditor should be identified as the corporate auditor of the smart metering entity. Again, it really struck me as a clanger. You’re talking here about something that I think, more and more, we’re coming to the view could cost \$2 billion to set up and would be dealing with billions of dollars of energy exchange on an annual basis. I don’t think I’d be exorbitant in saying \$10 billion worth of business in a year. It seems to me that you would want the Provincial Auditor to be able to look at this entity and how this money is being spent and whose money it is. Again, this is not just competition in the marketplace; this is government setting up this very large, very powerful entity with the capacity to very much intrude into people’s lives. It seems to me that having the Provincial Auditor excluded from being able to look at this entity is a real cause for concern.

Dr. Winfield: I think what underlies both issues is really what’s in section 53.7 of the bill, which is that the government is indicating that it hasn’t actually decided what the institutional form of the entity is supposed to be. There’s actually a list of different possibilities: a partnership, a designated entity, any one of a number of things. I think in the absence of a resolution of that question, there may have been some hesitancy to resolve these other institutional questions. My own view, which

extends beyond the smart metering entity—I’ve published in academic journals about these types of issues—is that these sorts of things need to be under freedom of information and need to be under the jurisdiction of the auditor, because they are carrying out governmental and quasi-governmental functions.

Mr. Hampton: One final question: It strikes me that the government is putting a lot of their energy efficiency and energy conservation capital into smart meters. As I’ve read more and more of the information, what I’m hearing from local distribution companies is this is not going to be a \$1-billion project; this is more likely to be a \$2-billion-plus project with extensive operating costs. Have you seen any cost-benefit analyses that would tell us that an investment of \$2 billion plus, some of which will hit low-income Ontarians very hard, will say, “This is what you’ll get for this \$2-billion cost,” in terms of good energy efficiency, good energy conservation that is sustainable in the longer term?

Dr. Winfield: The only one I’ve seen so far that’s specific to the residential sector is in the Ontario Power Authority’s climate report. For their planning purposes, they have suggested that they think smart metering will result in a saving of about 500 megawatts, that it’ll take 500 megawatts off peak demand. That seems to be where they’ve ended up. That’s the only one I’ve seen in terms of an actual number of how much savings you would get out of—

The Chair: I need to intervene. Thank you, Mr. Hampton. Thank you, Dr. Winfield, for your presentation today.

WATERLOO REGION COMMUNITY LEGAL SERVICES

The Chair: I would now invite our next presenter, Ms. Gay Slinger from the Waterloo Region Community Legal Services. Seeing as it is your second trip to the main desk today, I’m sure you know the protocol. You have 20 minutes. Please begin.

Mrs. Gay Slinger: Good afternoon, Mr. Chair and members of the committee. My name is Gay Slinger and I’m here as one of the staff lawyers from Waterloo Region Community Legal Services. We’re a community legal clinic, obviously in Waterloo region. We’re funded through Legal Aid Ontario. This means that the people we assist are people who meet the legal aid criteria, which means we are dealing largely with people who are living on social assistance benefits, disability pensions, the unemployed, those working for minimum wage and seniors who are on very fixed, limited incomes. One of the areas on which we have particular expertise, I would like to think, is dealing with the Tenant Protection Act and landlord-tenant issues. Thank you for the opportunity to bring that perspective to the committee this afternoon.

There are two issues I would like to address. One, as I’ve already indicated, is the rollout of the smart meters throughout the province to all buildings, including multi-residential buildings. The second is the use of sub-

metering to allow landlords to unilaterally impose individual electricity billing to tenants, often through private sub-metering companies. Those are the two issues I am going to deal with.

We applaud the efforts of this government to reduce energy consumption, to develop this culture of conservation that we heard about. It's in the best interests of all of us. Tenants are interested in this as well. But my understanding is that the multi-residential sector in fact constitutes only about 7% of the total annual electrical consumption, and so to get really meaningful changes they have to be through landlords, not through the tenants. Mr. O'Toole's comments earlier with respect to the lack of discretionary conservation efforts that private residential people have—well, even more so with respect to tenants.

I'm here to express our perspective that in fact many tenants cannot simply shift to off-peak periods. It is not within their control to do so in any meaningful way to save money either for themselves or potentially for their landlords. As well, tenants simply cannot retrofit the buildings in which they live in order to garner any major or significant savings with respect to true conservation. This simply cannot happen without major changes being made to those structures before it happens.

I would like to start by saying it's very important to distinguish between the private homeowner and the tenant. Private homeowners can go out, and if our windows are drafty, we can upgrade them and put double panes on them and so forth. If I need more insulation in my house, I go out and get a contractor and I can do that. I can upgrade to a high-efficiency furnace. I can do all of that. Understand that tenants have no authority to do that.

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Folks, I guess I would just remind you that when I walked into this room over the lunch break—it was empty at that time—it was stifling hot in here because you don't have the control in this room. In order to control your own heat, you had to open a window. So there's your heat going out the window. Tenants are living with that same lack of control. They do not have the ability to effect true savings. Tenants can't do that, and that's all tenants regardless of economic class. Tenants, as has already been stated today, don't have control over the building. Contractors won't deal with them. Even if I had the means as a tenant to say, "Please come in and change my windows to double pane," no contractor will deal with me. They'll deal with the property owner. Many of our tenants of course have no means to be able to do that and, even if I did, why would I? Why would I upgrade what isn't my asset? I can't take the window out when I leave; that's the landlord's asset. Improve that and he'll get his return when the building is sold. I may even make myself liable if I do the work myself or get a contractor who does it possibly incorrectly. I could be damaging the building and making myself subject to eviction. So for many reasons, tenants simply do not have the authority to make the major changes that are necessary to effect true conservation, and that's really what this bill is about.

In order to deal with meaningful conservation, we have to deal with the energy efficiency of the building envelope, of the infrastructure and, quite frankly, of the appliances. We hear about that frequently. Without that, as I say, you're going to continue to have heat simply going out the window and old refrigerators consuming excessive amounts and so forth. Understand that even if you've got a gas-heated building, but it's not working properly, and that's not within your control either, that's when you start using your oven for heat and you start buying space heaters. That goes on your electricity bill. The landlord doesn't pay for that under a smart meter system if it's going to be downloaded to tenants.

Understand as well that many of our clients are disabled, elderly or single parents who are home all day with their children, so they have to live in their homes through the day. They don't go out and turn their thermostat down in the morning and come back from work and turn it up in the afternoon. They can't do that. They're living there. They can't sit in the dark. They can't turn off the radio and television all day and sit in silence. They can't turn down their heat even if it is individually controlled and sit there in the cold. This isn't a Third World country. They shouldn't have to live like that, but that's what tenants may be facing because there's very little discretion over what they control within their own units.

Understand that if you move to a smart metering system where the benefits are, first of all, to be found by shifting your time of use, many tenants can't shift their time of use because they're there all day. Understand that some buildings lock their laundry rooms at night in order not to disturb the other tenants. How do I do my laundry in the middle of the night if I'm a tenant? That may be saving the landlord money through a smart meter—it's not my expense—but nobody's saving because I can't use it. They simply can't meaningfully shift; that's to save anybody any money, quite frankly.

It is understandable that in this era of rising energy costs, landlords want to place that very volatile, ever-rising expense, with respect to electricity costs specifically, and remove that from their own operating budgets. That's good business sense. But if that's done through the smart meter program or otherwise, all incentive for the property owner to effect true conservation—and if that's what we're interested in, to effect that truly and meaningfully—is gone. Why would I have to retrofit my building, why would I have to upgrade? I'm not paying the bills anymore. So what's the incentive?

I have a concern that the current Tenant Protection Act—we talked about clarity a little earlier. There's a section under the Tenant Protection Act, section 24, which in fact imposes the obligations on a landlord to maintain "in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards." It is questionable—again, that's the need for clarity—whether that provision could be used by tenants who are living in a situation where they're paying

for their own utilities and are literally living in a situation where the heat's going out the windows and they can't control it, and they need to upgrade the insulation in their walls and do all of these things. It is questionable whether the Ontario Rental Housing Tribunal would say that energy conservation and the need to upgrade for that meets any of the requirements currently under section 24.

Understand that property standards bylaws locally—we often make use of them—are very helpful in trying to maintain buildings and get another force to come to bear where there are inappropriate circumstances with apartments. But they can only apply minimal standards and, to the best of my knowledge, they don't deal with energy conservation; in fact, when they pass bylaws to impose code restrictions, it is the code to the age of the building when it was built. So if I'm living in a 50-year-old building, all property standards under the current provisions can do for me is to say, "Well, all you're entitled to is the R value of what it was for 50 years ago." I don't even know if they talked about R values 50 years ago. So it may well be that beyond the Tenant Protection Act one should be looking at the Building Code Act, maybe even the Municipal Act, to ensure that local municipalities can deal in a meaningful way with energy conservation, particularly if this kind of program is to be rolled out.

We then come to the sub-metering issue. You've already heard a number of concerns today from other people and I'll try not to be overly repetitive, but understand that there is a reason for landlords to want to off-load these costs. There is the popular concept out there that, yes, if tenants are responsible for their own usage then they will become more responsible users and will save money and will conserve. Please understand there are a couple of things on that. Already, tenants are paying for hydro. They pay for it through their rent. In fact, the guideline increase every year that is allowed by the province includes a component for utilities. So that can increase as utility costs increase. If it's particularly volatile, as has happened with some utilities in the past, and there's a spike, landlords can apply for above-guideline increases. They can recoup their costs. Utility costs are a tax-deductible expense. I'm a small landlord; I know that. I can deduct that. So they also get it back with respect to the assets' value increase if they go about with the retrofitting. So there are remedies to them.

Landlords currently, as has been said, are not allowed under the Tenant Protection Act to download these costs, or sub-metering, by simply unilaterally imposing this. It would be like a tenant coming to a landlord and saying, "I just don't like paying my rent this month at that level. How about we make my rent now \$650 instead of \$700." You know how that would go down. Well, what's happening here is the same thing. This would be a government-sanctioned, unilateral imposition of a contract change on two parties that bargained for this deal. Understand from the perspective of our clients: Some of our clients purposely seek out and find rents where the utilities are included. People who live on social assistance, on Ontario Works, on Ontario disability, live on a

shelter allowance that barely covers, if it does, what they pay for their rent. They need to know what their costs are going to be on a monthly basis. They made that deal with their landlord. If suddenly it's allowed to change and now the volatile rising expenses of electricity become their responsibility, then they no longer have that control to budget that they had. So you start finding tenants who are making choices between paying rent, getting food, getting medicine for the children, paying the hydro, paying the gas, whatever. Those choices are being made. That's what would happen to many people if this is unilaterally imposed.

We've already had some discussion with respect to if, under the current system, it is done through a consensual basis with tenants, how then do you determine what a fair reduction is in the rent? There is no formula in the Tenant Protection Act as it currently stands. As Ms. Pappert has already pointed out, there are many factors that go into one's consumption within a unit. So how is it fair to determine for this apartment or that apartment what is going to be the fair reduction?

It is also very important, I believe, that you look at the guidelines currently regulating the business of sub-metering. Companies that engage in this work have very few controls over what they can charge for monthly administration fees, how those rates can be changed; and there are no controls, as I understand it, over cut-off provisions. So through sub-metering you're not just paying for your consumption. I'm not saying that some tenants, if they could see their consumption, might not say, "Okay, I'll shut off a few more lights, if I can." But even in some of these sub-metering situations some of these meters are in a locked room. So we talk about transparency and somebody being able to see their meter and understand the impact of shifting? They can't see it. It's locked up in a room to which only the landlord has access.

It's unregulated distributors. For one thing, you've got tenants who are trying to not just recover and conserve and save through their usage; now they've got to cover the administration cost, the downloading cost. Some of these tenants are being asked to pay for the meters' installation, the meters themselves and the maintenance of those meters. How is that fair? It's not my asset. I can't take it when I go. That's the landlord's asset.

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There's also the concern that there are a number of programs in place with local utilities for price reductions, credits and programs available to users, largely low-income homeowners perhaps. If it is made available to tenants, how do you even find these tenants, if they are not direct customers of your local utility? Because under sub-metering the only client of the distribution company utility is still the landlord, so if there are rebates to be had, they'll go to the landlord. What's the guarantee that it will filter down to the tenants, who are in fact the consumers and who are paying the middleman's sub-metering company? All of those kinds of concerns exist as well.

Many of these concerns exist for tenants who already move into a unit where they are responsible for their own utilities. There should be transparency. If I move into an apartment, I should be able to ask, "What is the electricity cost on these?" Is there fair and appropriate disclosure? Again, the only effective way to conserve in the rental housing market is to impose that obligation on the landlord, who has both the authority and the means to truly effect the changes that will mean anything from a conservation standpoint when you're talking rental housing market, and that's what I'm speaking of today.

Mindful of the time, I urge you to look at the written submission that we have provided to you. I thank the committee clerk for distributing that. There are some recommendations in there. Education certainly is part of that. We all understand that we've got to learn. I'm hoping that conservation will become as popular as drinking and driving has become unpopular. It will take time, but through education it can happen. Tenants will be part of that, willingly, but there are a number of other things that have to happen first.

The Chair: Thank you, Mrs. Slinger. There are about 90 seconds each. Mr. Yakabuski.

Mr. Yakabuski: Thank you, Mrs. Slinger, for your passionate presentation. I certainly agree with you that tenants lack the authority to effect changes to their buildings. Low-income homeowners have no more the means to effect changes to theirs; they have the authority, but they don't have the means.

Mrs. Slinger: If I can interrupt there, I know that there are financial programs available to assist them.

Mr. Yakabuski: Okay. I just want to draw an illustration, because we are short of time. Tenants A, B and C live in the same building. There are more of them, but we'll just—A, B and C, and they're all similar. They're single persons, using about the same amount of electricity. I think we're separating sub-metering and smart metering. We have our severe doubts about whether smart metering works in residential applications across the board. We think it has tremendous potential in commercial applications, but to put in the 4.5 million they're talking about across the province is dubious.

However, tenant A realizes that there is no sub-metering in this building and makes an arrangement with the deli across the street to start baking cakes for them, because they're not paying for the power. Tenants B and C are still single people, living in the same building, but now they're subsidizing tenant A, because tenant A has realized, "You know what? It's a free ticket on power here. We don't have to account for it personally."

The Chair: With apologies, Mr. Yakabuski—

Mr. Yakabuski: Anyway, I'll turn that over. How do you address that?

The Chair: You can address it in the following-up remarks. We'll turn to Mr. Marchese for the NDP. Ninety seconds.

Mrs. Slinger: I really want to respond to that, Mr. Chair, but—

Mr. Rosario Marchese (Trinity-Spadina): Ninety seconds doesn't leave room for anything. I want to thank you for adding your voice to the others, such as the Advocacy Centre for Tenants Ontario. I'm assuming the Social Housing Services Corp. might have the same kind of concerns.

Mrs. Slinger: I don't know.

Mr. Marchese: But you're lending weight to similar kinds of arguments that I think Mr. Leal was sensitive to when he asked the previous group to send in the recommendations. Presumably, he's amenable to changes.

Just a comment from you: What do you think about the wisdom of spending about \$2 billion on capital, including whatever on operating, versus so many other things that could be done in the area of energy efficiency in general?

Mrs. Slinger: My opinion, and from the testimony I've heard as I've been sitting here, is that quite frankly I think it could be better spent. Again, I'm coming from the perspective of the rental housing market in particular, and I just don't see that. Quite frankly, one of the other things that needs to be done is independent studies with respect to whether this is effective: the smart metering program and, with exception, the sub-metering program as well. Neither one has been investigated by any kind of neutral or independent source. We need to study these things before they're imposed. Until that is done in an independent fashion, I would say it's not necessarily a wise investment.

The Chair: Thank you, Mr. Marchese. I would just advise you, Mrs. Slinger, that you're most welcome to respond to anything in writing as a follow-up, should you wish to do so.

The last 90 seconds go to Mr. Leal.

Mr. Leal: Mrs. Slinger, I appreciate your very forthright comments. A couple of questions: I'm a former municipal politician and you would think, or you might suggest, that changes to either the Planning Act or the Municipal Act—

Mrs. Slinger: The Building Code Act.

Mr. Leal: —the Building Code Act would perhaps go a long way to addressing some of the changes you've talked about.

Mrs. Slinger: I'm sitting on a committee right now that is looking at the city of Kitchener property standards bylaw, something the department itself is looking at. They've recently given me a case that came out last year of a building that was about 30 years old. The local municipality tried to impose guidelines with respect to hand-rails and so forth, using modern-day code on this old building. The court held that you couldn't do that, at least without redrafting the legislation, building in policy statements and so forth with respect to safety. Again, clarity: It may be, and again I'll leave this to the experts, but by looking at the Building Code Act, perhaps the local municipalities could be given the authority, especially with respect to the public policy about energy conservation, to impose current efficiencies upon old buildings, regardless of age.

Mr. Leal: A second quick question: You noted section 24 of the Landlord and Tenant Act, the need to keep a building in a good state of repair. Would it be your view that perhaps an amendment should be made to that section with regard to conservation, to be a companion of the concept of a good state of repair?

The Chair: Very rapidly, please.

Mrs. Slinger: Some will say that you might be able to argue it under the current legislation; I, again, believe in clarity. Put it there that energy conservation is also one of the standards that need to be met; otherwise, the tribunal will look to that and say, "You've got shelter, the snow isn't coming in, the window isn't broken, it's drafty, it's not energy-efficient, your 25-year-old fridge isn't energy efficient, but it's working." I would suggest that it needs to be there specifically to make it clear for all concerned.

The Chair: Thank you, Mrs. Slinger, for your deputiation on behalf of legal services in the Waterloo region.

ENBRIDGE GAS DISTRIBUTION INC.

The Chair: I'd invite now our next presenter, Mr. Lino Luison, on behalf of Enbridge Gas Distribution. As you've likely seen, Mr. Luison, you have 20 minutes in which to make your presentation, and the time remaining will be distributed among the parties afterward. Please begin.

Mr. Lino Luison: Good afternoon, everyone, and thank you for the opportunity to address the committee today. As Canada's largest natural gas utility, with more than 1.7 million residential, commercial and industrial customers in Ontario, Enbridge Gas Distribution has a keen interest in Ontario's energy future. The utility has a long tradition of contributing to the public policy process and hopes that this submission will assist the government as it moves forward with significant decisions that will lay the groundwork for Ontario's prosperity.

We applaud the direction of Bill 21, in particular with respect to its emphasis on building a conservation culture in the province through various initiatives. We appreciate and support the bill's interest in giving consumers the tools they need to make this happen. Many of you will be familiar with the success of our energy efficiency programs, which in just 10 years have helped our customers save enough natural gas to serve 750,000 homes for one year.

More recently, we have been working with the government to deliver targeted programs that achieve energy savings for low-income consumers in particular. We look forward to working with our customers, the energy industry and elected representatives to continue making a positive contribution to Ontario's prosperity by sharing our expertise in this area.

Specifically, today I'm here to highlight several areas where I believe Enbridge can bring value to the province and help its energy consumers, large and small, in terms of electricity reliability and making smart energy choices.

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While much of the broad discussion regarding the role of natural gas in addressing Ontario's electricity supply gap tends to focus on large, central, gas-fired generating plants, the benefits offered by fuel switching, fuel cells and demand-side management should not be overlooked.

I'd like to highlight several areas in particular: the role fuel cells can play, issues with Ontario's building code and the impact fuel switching from electric to natural gas appliances can make to Ontario's energy landscape.

My comments today should be considered in the context of the OPA's recent supply mix report, which recommended the adoption of a smart gas strategy. It discussed using gas only in high-efficiency applications or applications where avoided costs are particularly high. The applications it foresaw include combined heat and power, cogeneration, meeting peaking needs, relieving transmission constraints and fuel cells or other distributed generation.

As well, the report indicates that "Ontario's supply mix should not include significantly more natural gas-fired generation than has already been contemplated by recent procurement directives. While natural gas prices are expected to continue to decline from their recent all-time high levels, we still recommend that any further additions should be part of a 'smart gas' strategy that stresses the advantages of natural gas and limits the unnecessary exposure to price and supply risk. In addition to the current procurements, the portfolio should include up to 1,500 megawatts of natural gas. This may be 500 megawatts of fuel cells or other distributed generation and 1,000 megawatts of generation for relief of transmission bottlenecks."

While Enbridge Gas Distribution supports the general direction of the OPA report, the utility was disappointed that the report did not detail the OPA's proposed smart gas strategy. As a result, my comments today represent our thoughts on additional ways we believe gas can be utilized to help meet the government's energy objectives and produce benefits for the residents and businesses of Ontario.

My comments should also be considered in the context of the North American natural gas marketplace. Ontario's natural gas marketplace is part of a continental North American marketplace and has access to multiple supply sources through a vast network of transmission pipelines. The gas distribution network within Ontario is mature, with Enbridge itself tracing the development of its well-established infrastructure over almost 160 years.

Enbridge Gas Distribution and Union Gas are the main distributors in the province, and each earn a regulated rate of return on the capital invested in the distribution system. Safe and reliable natural gas is now the number one fuel for home and water heating in this province.

Earlier, I briefly mentioned our success with demand-side management. For energy efficiency programs to continue to play an important role in Ontario's future, we would encourage clear role definition and fair attribution

rules for private sector participants, as well as regulatory efficiency.

While many discussions about Ontario's energy efficiency efforts focus on electricity, gas must also be part of the equation. We must use all our resources wisely, and gas can be a big part of Ontario's energy solutions. For example, cogeneration and combined heat and power applications can achieve significant efficiency improvements over traditional power generation methods. In addition, an opportunity exists through the advancement of fuel cells in Ontario.

We were pleased that the OPA report recommended a portfolio of up to 1,500 megawatts of natural gas in addition to current procurements and specifies that, of that, 500 megawatts would be for fuel cells or other distributed generation. We applaud the OPA for its forward-thinking views on fuel cells. Fuel cells represent a low-impact supply of electricity and must be considered on a level playing field with other low-impact supplies like wind and biomass.

We believe that to achieve that 500 megawatts of fuel cells by 2015, the Ontario Ministry of Energy must immediately focus on supporting key demonstration projects. They must support smart policy and regulatory development, and collaboration with industry on near-term commercialization efforts.

Natural gas and electric utilities are ideal incubators of advanced energy technologies like fuel cells. These fuel cells have a small footprint, can be installed within the existing gas distribution infrastructure, are environmentally ultraclean and are an alternative to large wired investments within built-up urban areas.

Enbridge Gas Distribution is willing to invest in this technology and is in fact promoting a demonstration project at our head office in Scarborough in 2006 and 2007. However, we also need public sector funding and policy support for this demonstration project. To date, we have met with some success at the federal level. EnerCan and Industry Canada have been supportive, and we are short-listed for funding consideration. We have also applied to Ontario's fuel cell innovation program for potential funding of our pilot installation.

With the Ministry of Energy's support at the provincial level today, fuel cells could become a part of Ontario's energy supply mix within the time period set out by the OPA. Beyond 2007, Enbridge's pipeline infrastructure alone can support 40 to 60 megawatts of opportunity through fuel cell integration at our city gate stations. Other utilities could then build on this, with the ultimate adoption by industry and institutional customers for high-efficiency cogeneration using fuel cells.

So what are the critical steps to achieve success in this area? First of all, we need a successful demonstration project. As I said, that's what we are pursuing on site at our home office. Second, we need a supportive and favourable regulatory environment at both a policy and rate approval level. Third, we need support from the OPA, and lastly, policy and regulatory support from the Ontario government.

The next thing I'd like to bring to the committee's attention is the issue of fuel switching. Fuel switching refers to substituting natural gas appliances for existing electric appliances. At the request of the Minister of Energy, Enbridge Gas Distribution worked to develop a model that quantified the results that fuel switching would achieve if residents were to use natural gas furnaces, water heaters, ranges and clothes dryers, instead of their electric counterparts. Such fuel switching would support a smart gas strategy, since using these natural gas appliances is much more efficient than using electric appliances. Using natural gas as a primary energy source versus a secondary energy source achieves significant efficiency advantages.

I believe all of you have received a copy of the presentation that we've brought with us. If you look at slide 10 in your packages, you'll see that natural gas appliances achieve a quantum improvement in energy efficiency relative to using electric appliances.

Consumers would be encouraged to switch from electric to natural gas appliances if appropriate financial incentives were in place. Based on our modelling, the cost per megawatt saved would amount to just over \$350,000. That cost is well below the cost of meeting that demand through additional generation alternatives proposed by the OPA in its report. Furthermore, fuel switching would achieve \$1.2 billion in customer net savings on appliance operating costs. Let me repeat that: Fuel switching would save \$1.2 billion to the consumers of this province.

Gas prices have fallen significantly in the last three months, but even when they were at their peak at the start of the winter, it was still nearly 30% less expensive for Enbridge Gas Distribution customers to heat their homes and water with natural gas than with electricity. As well, it is also 23% and 27% more cost effective to use natural gas for cooking and drying applications respectively. From our point of view, if you'll allow me to be colloquial, the fuel switching alternative should be a no-brainer.

In addition to financial benefits, fuel switching offers advantages in terms of implementation timelines. A plan could begin immediately, providing a quick win toward addressing Ontario's electricity supply crunch by reducing demand for electricity. Extensive natural gas distribution systems are already in place in this province, allowing for speedy implementation. With abundant natural gas supplies readily available well into the future, Ontario is well positioned to benefit from fuel switching.

Fuel switching also provides benefits associated with reduced demand on the transmission system, which may reduce or delay costs associated with reinforcing the transmission system to meet demand growth.

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Finally, fuel switching would support the government's interest in improving air quality by delivering a 2.5-million tonne reduction in greenhouse gases. Obviously, Enbridge believes that fuel switching can make an important contribution as Ontario works to address its electricity supply challenges.

Let me change gears a little bit. It is our understanding that the new Energy Conservation Leadership Act envisions changes to the current building codes that impede conservation initiatives, and I believe the last speaker spoke a little bit about this as well.

We believe that some changes to the Ontario electrical code will level the playing field between natural gas and electricity and support the government's conservation and efficiency policies. Currently, under the OEC, builders are required to install an electric range outlet even if a gas range will be installed instead, and the OEC makes no provision for the installation of a gas dryer. Furthermore, the customer must pay for an electric range outlet even if it will not be used; they must also pay for an outlet normally required for a gas range. Obviously neither builders nor homebuyers are keen to absorb these redundant costs, so the gas outlet is usually left out during home construction.

We propose changes to the OEC that would allow the builder to offer the customer a choice of making the electrical or gas hookup. Utilities are not asking or expecting that the builders be precluded from offering the electrical option, but just to allow the builder to offer the gas option as well on a fair and equal footing. As I've already pointed out, the use of a gas dryer and a range rather than an electric dryer and range is far less costly and more energy efficient for the consumer.

We are confident that Enbridge can play a greater role in addressing Ontario's electricity challenges. However, we cannot do this alone. In addition to working with our customers and others in the industry, we also want to work together with the government. As I've mentioned, in the area of fuel switching, for example, appropriate provincial policies, directives and funding are required. There is also an opportunity to support the government's objectives by levelling the playing field between gas and electric appliances through alignment of the Ontario building code. We must work together to tap existing expertise where it makes sense and we must keep the lines of communication open throughout the process. Today is certainly part of these communications and I appreciate the opportunity to be here. I welcome your comments and any question you might have.

The Chair: Thank you, Mr. Luison. We have about two minutes per party. We'll begin with Mr. Marchese of the NDP.

Mr. Marchese: Mr. Luison, you may have heard other speakers before and you may have heard questions from Howard Hampton earlier. One of the questions he asked to a number of deputants was that there has been no cost-benefit analysis. As someone working for Enbridge, that's almost something that would be automatic for any corporation or company, would you not agree?

Mr. Luison: Certainly any initiative that we would pursue would typically undergo very rigorous cost-benefit analyses. I can't comment on some of the other ones that were addressed today, because I wasn't here, but the fuel switching initiative, for example, that I've proposed in my talk today has a payoff of roughly 240%.

So for an investment by the government of roughly \$500 million, we would get a savings to consumers of \$1.2 billion. So the cost-benefit analysis has been done on our part.

Mr. Marchese: You would expect, as I would, that the government would do such a cost-benefit analysis in order to be able to convince us and the people who are going to be paying for this that this is good for them and good general government policy. Wouldn't you agree?

Mr. Luison: I would suggest it's always good public policy to have the numbers to back things up.

Mr. Marchese: In California, where they tried the smart meter, they had assumed they would save about 500 megawatts of power, only to discover they only saved about 35 megawatts of power. Given that and given that this is likely to cost \$1.5 billion to \$2 billion, based on estimates that we have seen or based on what we think is going to be the cost on capital alone, let alone operational, just to ask you the same question I asked the previous deputant, do you think this is a wise investment versus some of the items you've suggested and that others have suggested?

The Chair: Mr. Luison, you can perhaps address that question in a follow-up. We'll move to the government side.

Mr. Delaney: I'd like to follow up on your comments on fuel switching. As a scenario, just imagine that in the next 10 years, roughly a million Ontario homes either are built for or convert to natural gas ranges and gas dryers. Here are my questions, and they relate to the infrastructure that Ontario has for the procurement and distribution of natural gas: Can we get gas to distribution centres from its sources, be it through pipelines or liquid natural gas? Secondly, is our infrastructure for the distribution of gas up to date, or as producers and distributors will you need to invest in upgrades to it?

Mr. Luison: Let me address the supply issue first of all. Let me tell you that I'm very confident, as is the industry, that there is no issue with respect to supply of natural gas in North America. We have new sources coming on, we have the traditional basins, and we have imports coming in through liquefied natural gas sources, as you've already pointed out. There are plenty of projects on the books, and many of these new sources of supply are at least as large as those that we've traditionally relied upon. So on the supply side, there is no issue. There are plenty of plans and investment projects in place to bring it here at reasonable cost and in an economic way.

With respect to the infrastructure, virtually the same answer: Both Enbridge and other companies have very large investment in pipeline infrastructure. Enbridge Gas Distribution, specifically, has been putting in distribution infrastructure for over 160 years. Yes, additional investment is required. We continue to make reinforcement and expansion investments every single year, because we are growing by roughly 50,000 customers each and every year. These are challenges that are routine to us. Supply and infrastructure are not issues.

The Chair: Thank you, Mr. Luison. I would invite a final, efficient two minutes from Mr. Yakabuski.

Mr. Yakabuski: Thank you very much for your presentation. As the saying goes, "Now we're cooking with gas."

This is a very interesting submission. Of course, I've not had the opportunity to analyze it at all, but if your numbers are correct, we could take a tremendous amount of pressure off our generational demand if we had a reduction in the electricity demand commensurate, obviously, with switching to gas. My wife, who really enjoys cooking, has always said that she'd love to have gas appliances, but we don't have natural gas where we are, so she doesn't have the option. But she knows how much more efficient they are for a chef.

I haven't seen this presentation before; I haven't even heard about this idea. But it would seem to have tremendous potential if we could have a reduction in the megawatt demand if this number of appliances were operating on gas as opposed to electricity. The generation of electricity is one of our biggest challenges right now. If we needed to generate less because we were providing our needs from another source, I think that would be very helpful. As I say, we'd like to see more about it.

I know you are going to comment on Mr. Marchese's comment. There seems to be a general consensus out there from a lot of people that the entire smart metering initiative, the fruit it's going to bear, is questionable with regard to the investment that's going to be required, particularly on the residential side of things. Maybe you could answer both of us.

Mr. Luison: My comment is that we respect the government of the day and the initiatives that it wants to pursue. I'm not here to question the validity of those particular initiatives. I know that we can supplement those initiatives. We bring something to the table as well that we don't think has received proper and sufficient consideration, and we can assist the government in meeting its objectives. We all want the same ultimate objectives of increasing energy efficiency and conservation and doing it in a cost-effective manner. Gas has to be part of that solution.

The Chair: Thank you, Mr. Yakabuski. Thank you, Mr. Luison, particularly for a review of all our collective responsibilities.

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ONTARIO CLEAN AIR ALLIANCE

The Chair: I'd now invite our next presenter, Mr. Jack Gibbons of the Ontario Clean Air Alliance and company. I hope all members of the committee have received this particular deputation. As you've seen, there are 20 minutes in terms of presentation, with any time remaining to be distributed evenly. I invite you to begin now.

Mr. Jack Gibbons: Thank you very much, Mr. Chair, for the opportunity to speak to you today, and thank you very much to all the members of the provincial Legis-

lature who stayed here late on a Friday afternoon to listen to what we have to say.

Premier McGuinty is very strongly in favour of creating a conservation culture in Ontario. Premier McGuinty has said that he wants to make Ontario a North American leader in energy efficiency. The Ontario Clean Air Alliance very strongly supports these objectives, since conservation is the lowest-cost, the quickest and the most reliable option to phase out our dirty coal-fired power plants and meet Ontario's electricity needs. Therefore, we support Bill 21 because it will help the government of Ontario to promote energy conservation and efficiency.

However, much more must be done to promote energy conservation in this province. Last summer, Ontario had over 60 smog alert days. On these smog alert days, we imported up to 3,000 megawatts of dirty coal-fired electricity from the Ohio Valley. This is simply unacceptable, because coal-fired electricity imports from the Ohio Valley have a huge cost to the people of Ontario. There's a huge financial cost, and there's a huge cost to human health, because when we import coal-fired electricity from the US, we're also importing the air pollution too, which leads to asthma attacks, heart disease, lung disease, strokes and, ultimately, death. I've talked about the public health costs of coal-fired electricity imports, but just to emphasize, there's a huge financial cost. According to an analysis by Hydro One, in 2002 we were paying up to 60 cents a kilowatt hour for these dirty coal-fired electricity imports on smog alert days. That's a huge financial cost to Ontario. It means lots of our money is flowing out of Ontario to the United States.

But there is a better way. There's a much better way. On smog alert days, instead of paying US power producers up to 60 cents a kilowatt hour for coal-fired electricity imports, the Independent Electricity System Operator should be paying Ontario consumers to shift to reduce their demand, to reduce some of their peak day demands to off-peak periods. That's a much cheaper way to keep the lights on in Ontario. Pay consumers, pay Falconbridge, pay Abitibi Paper, pay the York region school board, pay Magna International, pay Toronto Hydro to reduce some of their peak day demands to off-peak periods on smog alert days.

That has multiple benefits: First of all, it keeps Ontario consumers' dollars in Ontario instead of exporting them to the Ohio Valley and it helps create jobs in Ontario. And it dramatically increases the reliability of Ontario's electricity system. If we can reduce the need to import 3,000 megawatts of power on peak smog alert days, our electricity system will be so much more reliable. There is no quicker, no cheaper, no better way to ensure that the lights stay on this summer than paying Ontario consumers to reduce their demand. I'm just saying, pay them the same price that we would have otherwise paid to the US coal-fired power producers. So it doesn't cost Ontario more, it keeps the money here in Ontario and gives us a more reliable system. It also means we're not importing that coal-fired electricity and the air pollution from the United States, so it means fewer asthma attacks for our children.

In conclusion, the Independent Electricity System Operator has the potential to completely eliminate the need for dirty coal-fired electricity imports on smog alert days this summer by paying Ontario consumers to shift some of their peak day demands to off-peak periods on smog alert days. I would strongly urge this committee to recommend to the government of Ontario that they direct the Independent Electricity System Operator to pay customers to reduce their demands on smog alert days, keep the money here in Ontario, increase the reliability of our power system, and reduce air pollution from the US on smog alert days.

Thank you. Those are my submissions. I'll be glad to answer any questions.

The Chair: Thank you, Mr. Gibbons. We'll have about four minutes or so each, beginning with the government side.

Mr. Leal: Thank you, Mr. Gibbons, for your presentation. You identified a number of industries and big commercial players in the Ontario economy. Have you talked to them about your concept?

Mr. Gibbons: Yes.

Mr. Leal: Is it feasible in terms of—we'll take Magna, for example—making auto parts and just-in-time deliveries, and whether they could shift their manufacturing profile to what you have suggested? I'd like to hear thoughts on that.

Mr. Gibbons: Magna is very much in favour of this type of proposal. They wouldn't stop producing car parts, but Magna has many discretionary uses of electricity that can be shifted from one hour to another hour, so they could definitely take part in this. For example, as you may know, there is a reliability challenge in the Newmarket-Aurora area, where Magna has many of their plants. The Ontario Power Authority had a consultation process last summer just to talk about how to deal with that problem. I was on their consultation committee with the energy manager from Magna, and he strongly supports this.

Certainly, if you talk to companies like Falconbridge, to companies like Abitibi, these companies support it. In York region, the York Region District School Board strongly supports it. In York region, the schools are also used as recreation centres, so there's huge potential for them to control their loads on smog alert days. Again, keep the money in Ontario: It's much better to make the York Region District School Board richer than to send that money to the US Ohio Valley.

There's huge potential. The Association of Major Power Consumers of Ontario is a strong supporter of demand-response programs. Basically, all consumers are for it. The people who are against it are electricity suppliers, because when you reduce the demand for electricity, of course, you push down the spot price, which lowers their profits.

Mr. Racco: Is there more time?

The Chair: Yes. Any further questions?

Mr. Racco: If I may. It's a lovely idea. I'm familiar with what's happening in Aurora, since I live in the area.

But how is Magna going to switch their demands to a later time? I mean, we're talking about a manufacturing company that produces all day long. How are their needs going to be switched to a later time?

Mr. Gibbons: They're not going to shift their production to another time, absolutely not, because as the other member mentioned, it's just-in-time delivery. But not all of their electricity is used to drive the production process of getting car parts out the door, so they do have discretion; certain loads can be operated at different times and cycled on and off. Now, I'm not an engineer and I don't run the Magna plant, so I can't tell you. I could give you the name of the Magna energy manager and he could certainly explain it to you, because this came up in our discussions last summer at the OPA consultation and he definitely said he could do it. But I'm an economist, not an engineer, and I can't really tell you how car part plants operate.

Mr. Racco: To conclude, let me say thank you for what you told us. I would be interested to have the name not only at Magna but also at the York region public school system so that maybe we can have a little discussion with them and get more specifics. I thank you for that.

Mr. Gibbons: I'm pleased to give it to you, sir.

The Chair: We'll move to the Tory side. Again, four minutes.

Mr. Yakubuski: Thank you very much for your presentation, Jack. I do have some questions on that, and some are the same. As usual, I'm on the same side as the Liberals.

You're talking about shifting of peak demand. I'm just doing some thinking in my head here, but—

Mr. Leal: Uh oh.

Mr. Yakubuski: Yes, I know; that's scary.

The more successful you are at doing that, the more declining the benefit would have to be, because then the spot prices wouldn't be \$400 a megawatt and stuff like that; it would be a declining benefit the more successful we would be. You can't pick and choose who—especially at the high prices, you'd be paying companies a significant amount of money to shift some load and some demand. That can't just apply to Magna; it could maybe apply to a sawmill in my riding. Depending on how successful you are, you might find that the willingness to participate if the price is there is extremely high, so depending on how successful you are, you could actually create another problem. I don't think it's as simple as we might like to look at it, that we get a few big users to stop using energy and we don't have to bring in coal-fired power produced in the Ohio Valley.

I don't know what kind of analysis you've done across the board. Maybe Abitibi wouldn't have had to lay off 360 workers and shut down the mill, or Bowater wouldn't be shutting down 260 workers if they were getting paid not to operate their mill. They may be willing to pay their workers to do something else for that time, I don't know. Depending on how high those prices go, the amount of money that's being thrown around can get pretty significant.

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You and I have met. There's no question that we agree there are things that can and need to be done to reduce our appetite for energy growth in Ontario, and conservation is a big part of it. We all agree that we want to be able to produce power in the cleanest possible way in this province. We don't necessarily always agree on how we're going to do that.

As to my musings here about that plan of yours, what do you say? Hey, Jack, what do you say?

Mr. Gibbons: I think it's a very good plan for Ontario. For example, take Abitibi. What they would do, could do, if they were offered, to reduce their demand on a peak day, so we didn't have to import coal-fired electricity from the US, is that instead of operating their plant, they could schedule the plant for maintenance that day. They will still be hiring all their employees and they will still be creating jobs for the people in Ontario, but instead of operating their plant to produce pulp and paper on a smog alert day, they will be doing the maintenance they have to do anyway. They just schedule the maintenance on that day. They'll be paid a significant amount of money to do that, to schedule maintenance on that day. That would lead to a net reduction in Abitibi's annual electricity bill, because they're paid to schedule their maintenance on a smog alert day so we don't have to pay US power producers 60 cents a kilowatt hour to import the power. So Abitibi's net electricity bill for the year goes down, and that makes Abitibi more competitive. It reduces their electricity costs, so they'll be more competitive and more likely to prosper in Ontario and keep jobs here.

I think it's just good news. It has no downside.

Mr. Yakubuski: You would have to know in advance. I don't know how far in advance you can project what days are going to be smog alert days, but you couldn't have Abitibi have the people show up at 7 o'clock: "Oh, boys, home you go, it's a smog alert day and we're going to do maintenance, or stay here and we're going to do maintenance." They're in a business where they can't just up and start it, stop it. You got to have some consistency.

Mr. Gibbons: Sir, you're absolutely correct. If you look in our submission that was handed out, on page 10 it talks about the demand-response program. This is called demand-response, the technical name for it. Basically, the independent electricity system operator has a demand-response program. We describe it here. They only want to operate on absolute emergency days when the system is about to crash. We're saying to also do it on smog alert days. The independent system operator has already got a plan to pay customers to reduce demand. We're just saying to expand it and also activate it on smog alert days, and pay people what you would have paid the US coal-fired producers. Under the IESO's plan, they would notify Abitibi a day in advance that we think—

The Chair: We're going to have to leave it at that. Thank you, Mr. Yakubuski. We'll move to the NDP side; four minutes.

Mr. Marchese: Mr. Gibbons, you started off talking about how you support the government's objectives vis-à-vis wanting to be North American leaders in energy efficiency, and you're not the only one who started that way; many others have said the same thing. I look at Schedule A. You have probably read the bill; of course you did.

Mr. Gibbons: Yes, I've read it.

Mr. Marchese: Schedule A talks about the Energy Conservation Leadership Act. As I review that schedule, in Schedule A, section 2, "A regulation may provide for consequences if a person fails to comply with a requirement established under this section." That's under "Effect of non-compliance." I move on to the next page, section 4, and it talks about, "The Lieutenant Governor in council may, by regulation, require public agencies to prepare an annual energy conservation plan." I move on to the next page, section 5: "Two or more persons may prepare a joint energy conservation plan and may publish and implement it jointly.... The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency in their acquisition of goods and services," and blah, blah, blah.

It goes on to say, "The Lieutenant Governor in Council may, by regulation, require public agencies to consider energy conservation and energy efficiency when making capital investments," and on and on.

Section 7: "The Minister of Energy may enter into agreements to promote energy conservation."

You understand what I'm getting at, right? The whole schedule is exactly like that. I'm amazed how many deputants have come forward, saying how strongly they support the government in its initiative to conserve. As I read schedule A, called the Energy Conservation Leadership Act, it doesn't prescribe anything. It simply says it may do this or that, but it's not prescribed that they will do anything.

Does that bother you as someone representing the Ontario Clean Air Alliance today, that there's no such prescription of language vis-à-vis the Energy Conservation Leadership Act?

Mr. Gibbons: No, sir. I understand this to be enabling legislation. It gives the government the ability to do these things. I think that's appropriate. Then the government will actually issue regulations or directives under this act. I think that's wholly appropriate. This is to make public agencies promote energy conservation. There are many examples in this province where public agencies don't do that. We've got all these low-income housing developments that have gone up in this province with electric heating, which is the worst possible.

Mr. Marchese: We understand what you're saying. I'm agreeing with you. All I'm saying is that, while it is enabling, it doesn't say anything about what they may or may not do. What you're saying is, "I have faith in the government to do something with this bill that says they're enabling someone to do something," and you're fine with that. If you're fine with it, that's fine.

Mr. Gibbons: This bill enables the government to more effectively promote energy conservation. It's not a panacea.

Mr. Marchese: I understand that.

Mr. Gibbons: It won't solve all the world's problems—

Mr. Marchese: I agree with that.

Mr. Gibbons: —but it will help the government achieve its objectives.

Mr. Marchese: I understand what you're saying. I'm a bit disillusioned about the fact that it says nothing, prescribes absolutely nothing. I'm in disagreement with you that you're happy with the enabling legislation that may or may not achieve something. So thank you for that.

The other point you make is, why not pay consumers to reduce peak day demand? I think it's a very useful suggestion. I think some of the members think so too, and I am amazed the minister hasn't thought about it. I wonder whether the civil servants know about these ideas—

Mr. Gibbons: Yes, they do.

Mr. Marchese: —because they're quite aligned with your support for their enabling conservation ideas. I'm assuming the minister is aware of these things—

Mr. Gibbons: Yes, she is.

Mr. Marchese: —that the civil servants are aware of these suggestions.

Is there any reason, do you think, why they haven't thought about bringing them forward as useful things we could do?

Mr. Gibbons: Traditionally, these types of proposals have been very aggressively opposed by energy supply companies because they will reduce the price of power and reduce the profits.

Mr. Marchese: So the government is reluctant, perhaps, to introduce such initiatives because of that, do you think?

Mr. Gibbons: They are the organizations that lobby against proposals like this. These proposals are generally endorsed by all consumers in Ontario because it's in the best interests of all Ontario electricity consumers. In my view, it will help increase the competitiveness, the prosperity of this great province. But energy suppliers are—

Mr. Marchese: I'm convinced that these Liberals here present are going to support—

The Chair: We'll have to leave it at that, Mr. Marchese. On behalf of the committee, I'd like to thank you, Mr. Gibbons, from the Ontario Clean Air Alliance, for your deputation.

SOCIAL HOUSING SERVICES CORP.

The Chair: I invite our last presenter of the day, Mr. Colin Gage, on behalf of the Social Housing Services Corp. As you have seen, you have 20 minutes in which to make your presentation, the time remaining to be distributed evenly among the parties afterward.

Mr. Colin Gage: Mr. Chairman and members of the justice committee, thank you for the opportunity to come before you today. I am happy, by way of introduction, to let you know that I come wearing two hats today. I come wearing my hat as a director who sits on the Social Housing Services Corp. and I also wear my other hat as a provider or, making reference to a previous presenter, I am a landlord with a heart.

We come to you today to talk to you about Bill 21. It presents an opportunity for the Social Housing Services Corp. to assist the province of Ontario in achieving a conservation culture, and for the province to consider the Social Housing Services Corp.'s continuing work in energy conservation for the social housing sector.

My remarks on Bill 21 will revolve around five themes: our support for the creation of a conservation culture in Ontario; our desire to continue working with social housing providers on energy management issues; our wish to communicate the complex nature of our sector as it relates to energy matters; the need for on-going consultation between the government and our sector; and most of all, the necessity to provide financing options to allow the social housing sector to reach its energy conservation targets.

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A little bit about the Social Housing Services Corp.: The corporation itself was established under the provisions of the Ontario Social Housing Reform Act, 2000. The act provided the legislative authority to devolve the administration and financing of social housing to the municipalities and district service managers in 2002, and it also established the Social Housing Services Corp. as an independent corporation providing common services to service managers, local housing corporations, non-profit and co-operative housing providers previously administered by the provincial government.

The Social Housing Services Corp. fulfills the need for a central body to serve as a resource to 47 service managers of municipalities and over 1,600 housing providers within 455 municipalities throughout Ontario. The service managers collectively manage some 250,000 social housing units with over 700,000 residents. I would suggest to you that it doesn't stop there because what I've just alluded to are those developments that were funded under the provincial initiative, but do not include the federal unilateral development, so the scope of social housing in Ontario is much larger, I would suspect, than the numbers I just cited. The Social Housing Services Corp. provides consistent quality services to housing providers, while taking advantage of economies of scale. The SHSC programs include bulk purchasing of insurance, the pooling of capital reserves, which came out of the Provincial Auditor's recommendations, joint purchasing of natural gas and research for best practices.

The social housing sector in Ontario collectively spends an estimated \$400 million a year on energy, which has been among our fastest-rising and most volatile operating costs, and I'm speaking now as a provider. Housing providers manage their operations within

very restricted budgets. We have another issue now beholding us. Effective January 1, 2006, all operating costs are now benchmarked, as developed in consort with the provincial government, delivered through the municipalities. So any monies we spend on utilities are now capped. In other words, they increase by the consumer price index on an annual basis, but in essence we have to operate within a capped cost of all our operating numbers throughout the course of a year.

Overall, two thirds of the rent that we receive comes from residents with the lowest income levels, or what we refer to as the working poor, and the remaining one third from by tenants on fixed subsidies that we receive from local municipalities.

Social housing providers face the problem of insufficient capital reserves to address their infrastructure renewal needs, including replacing energy-inefficient equipment or engaging in energy-efficient projects, which would also require capital renewable requirements. They are prohibited by the Social Housing Reform Act, and also from the provincial government and by the federal government through the operating agreements, to encumber their key assets, either through second mortgaging or whatever other instrument, to acquire additional funds through the equity base generated over the years.

In addition, energy conservation initiatives in this sector are confronted with a complex split incentive environment. A survey conducted by the Social Housing Services Corp. showed that housing providers pay 82% of the electrical costs in social housing units, while the residents pay the remaining 18%. It is critical to recognize this reality when designing energy conservation programs in the social housing sector.

Moreover, due to diverse geographic, build-form and tenure characteristics, the use of provincial energy consumption averages for the residential sector may not be applied to the mix of conditions in the social housing sector. The result is that the average consumption per social housing unit may be higher than the provincial averages for the residential sector, which in general reflects consumption patterns of single-family homes.

The social housing sector is constructed or built at a much higher density level than the standard subdivision that we see today. They're usually townhouses or high-rise structures.

In response to our members' energy needs, the Social Housing Services Corp. has developed the social housing energy management program, which is a comprehensive, province-wide, multi-year conservation and demand-side management plan. SHEMA includes energy audits, education, communication, retrofit implementation and evaluation through our energy management system. The intent is to establish a portal for energy management with the necessary information, tools and services to enable social housing providers of every type and size across Ontario to take action to minimize their energy and water use.

Building on our experience, the Social Housing Services Corp. has successfully negotiated with Hydro One

Networks Inc. for up to \$1.5 million over three years for housing providers in the Hydro One service area to help fund energy audits and retrofits. These are but a fraction of the overall implementation costs needed.

Conservation planning for public agencies: Schedule A of Bill 21 calls for conservation plans for public agencies. Establishing plans and reporting on energy efficiency within the public sector and the broader public sector is entirely in keeping with the Social Housing Services Corp.'s energy management approach. We are already carrying out much of the work in the social housing sector that is envisioned for public agencies in the bill. As described above, it is far more efficient and effective for the Social Housing Services Corp. to do this work on behalf of social housing providers than for each provider to have to develop, implement, monitor and report on their own management program.

On October 6, 2005, the Minister of Energy issued a directive to the Ontario Power Authority to assume responsibility for the ministry's energy initiatives as they pertain to low-income and social housing. The OPA has recognized our capacity to deliver on energy management by recently signing a memorandum of understanding with the Social Housing Services Corp. that designates us as their exclusive partner for their social housing conservation and demand management programs. This is a fact that we're very proud of, given the confidence that has been bestowed upon us. We will work together on promotion, implementation and education in social housing energy conservation.

Given that Bill 21 envisions the possibility of creating different classes of public agencies, and that SHSC is already working with the Ontario Power Authority on energy management planning for social housing providers, we would like Bill 21 to allow for classes of public agencies, such as the social housing sector, to be permitted to submit joint plans along with a recognized third party such as the Social Housing Services Corp.

The Social Housing Services Corp. would be happy to provide input in order to explore the possibility of such a third party to be included in the regulations of Bill 21. So that conservation opportunities in the social housing sector can be maximized, the Social Housing Services Corp. is prepared and able to convene a social housing service manager conservation council to help co-ordinate the work of housing providers who are administered through municipalities and districts.

There is, however, one matter that requires clarification. Because "public agency" will be prescribed in the regulations, it is not clear to us which social housing providers will be covered by the legislation. Local housing corporations and a few municipal non-profits may come under the provisions of Bill 21, but it is not clear whether other non-profits or co-ops will also be covered. If this question is not resolved, we run the risk of creating an asymmetrical energy planning system for the social housing sector, one that prefers public housing to community housing.

Smart meters: SHSC understands the aim of the government's smart metering initiative as a step towards

meeting Ontario's energy challenges. We are currently conducting a survey of our members in an effort to understand the possible impacts that smart metering could have on our sector. While we have no comments on smart metering at this time, we do believe in the principle that consumers of energy must conserve. However, we wish to flag some special challenges that implementing smart metering will pose for the social housing sector.

1600

Smart metering poses two main challenges to social housing. The first has to do with the nature of our building stock. Compared with the Ontario average, more of our buildings are heated by electricity. For residents of these buildings, reducing consumption during peak periods could often be an unrealistic option because they are home during the day or because the thermostat is controlled centrally, as alluded to earlier by another presenter.

The other challenge points to regulatory practices under Ontario Works and the Ontario disability support program. Many social housing residents pay for rent and utilities according to complex rent-g geared-to-income regulations under OW and ODSP. These regulations may not be adjusted to recognize the fluctuations in consumption or energy cost.

Time-of-use billing for necessary use of electricity could become unreasonably high for social housing residents, many of whom are already trying to get by on marginal incomes. If smart metering is to be implemented successfully and fairly, it will require careful thought and consultation between the government and service managers and social housing providers.

If the government does require smart metering in social housing, we would support the meters being owned, installed, operated and maintained by the local distribution companies, as suggested in the government's backgrounder on Bill 21. It would be easier for our members to deal with a regulated entity than a large number of independent metering companies.

Any requirements for energy-efficient planning and purchasing in the social housing sector must be accompanied by the requisite funding and/or financing options. I have already pointed out the restrictions our members face in finding the capital needed to maintain and improve their buildings. Social housing providers have projected capital needs for state-of-good-repair and health and safety compliances over the next 10 years, conservatively estimated at \$450 million in present value. Our members already have to make difficult choices in prioritizing capital spending today. It would be untenable to add energy projects to their lists without providing them with the financial tools that such projects will require.

It is important to understand that expenditures on conservation and efficiency are investments that ultimately pay for themselves and even save money in the long run. The challenge in financing energy initia-

tives is in finding the up-front capital needed to carry them out.

So where are the financial tools to come from? In her speech introducing this bill to the Legislature, Minister Cansfield pointed out that the government will be providing funding to municipalities for energy efficiency projects through the Ontario Strategic Infrastructure Financing Authority. We hope that municipalities will make energy investments in their social housing portfolios a priority. We would also like to see funds earmarked for energy efficiency measures from the Ontario-federal affordable housing agreement, the new delivery program for social housing in the province of Ontario. We do not want to repeat the sins of the past. I can assure you, as a builder, developer and landlord of social housing, we developed many units under a capitalized program that saw us build this housing with baseboard electric heat. We're currently in the process, as a housing provider, of building 42 units in the city of Cambridge and, because of the restricted capital costs, we have to put electric baseboard heating back in. It's a toss-up over who we serve: Do we provide this much-needed housing at the expense of hydro efficiency? It's a question that we're going to wrestle with if we don't keep this in mind.

Bill 21 relies on a vague requirement for public agencies to "consider" energy conservation and efficiency when making purchases and capital investments. We feel that clear regulations are needed to ensure that specific energy efficiency standards are deployed. SHSC believes that energy efficiency means implementing international standards such as LEED for new construction. The old practice of building social housing on the cheap and then paying higher utility bills and retrofit costs later on is not consistent with the goal of creating a conservation culture. Similarly, the regulations should also require EnerStar or some other standards for purchases of appliances and other equipment.

I would note that Ontario will be creating a huge market for energy-efficient equipment and hope that the government will capitalize on the economic benefits and market transformation this could bring to the province. A market for 250,000 refrigerators in social housing units should provide a powerful negotiating opportunity to encourage manufacturers and distributors to transform the marketplace with predominately EnerStar products.

Let me summarize by saying that:

—SHSC supports the government's desire to develop a conservation culture in Ontario;

—We will continue to provide energy management services to the social housing sector;

—Ongoing formal consultation with our sector will be an important element in ensuring reductions in energy consumption;

—It is critical that the government appreciate the complexity of social housing when designing energy programs that affect our sector;

—Adequate financing will be required to meet Bill 21's objectives.

I'd be happy at this time to answer any questions that the committee may have.

The Chair: Thank you, Mr. Gage. We have just a minute each. Mr. Marchese?

Mr. Marchese: I thought we had lots of time.

Mr. Gage, I want to thank you for your remarks. Thank you for pointing out that "regulations should also require EnerStar or some other standards for purchases of appliances." That makes sense. You indeed have a great influence in terms of—your power to buy so many refrigerators is one example of a way of leveraging some energy-efficiency ideas. I'm glad you pointed out the fact that the Toronto Community Housing Corp, for example, has capital needs of \$225 million. Unless we fix some of those problems, not just there but beyond, we've got a problem. You build on the cheap, and later on you've got these kinds of problems. So you can advocate all the conservation measures you want, but if you don't have the money to retrofit the buildings and fix them from scratch, you've got a serious problem on your hands, and the problem is that there is no money. Cities are broke; the city of Toronto is in the red by \$500 million, and most cities face similar problems. How can they help if the province doesn't help? These are some of the quick comments I wanted to make in a few quick seconds. I don't know if you want to comment on anything.

Mr. Gage: You're right. We do face a certain dilemma that we've all recognized: There is a shortfall—I'm sure that will be attested to by the municipalities, certainly the ones I've talked to—in funding for capital reserves. At the same time, I think we have to balance that. Much of the short funding in the capital reserve

items that we are trying to address are for such things as windows, which hopefully will be a higher-efficiency window that can help us conserve energy. It's sort of like a co-balance.

The Chair: To the government side.

Mr. Leal: Thank you very much for your presentation. Just a quick comment: As a former municipal councillor with social housing, I know that one of the difficulties is that when it was devolved in 1997-98, municipalities had the understanding that it was going to be in good repair and brought up to standard as part of the off-load from the Harris government, but in fact that never happened.

Mr. Gage: Would you like me to comment?

Mr. Leal: Absolutely.

Mr. Gage: I guess it's a pride thing for me, in the sense that I do manage a very large housing portfolio, 3,000 units and four area service managers, and I would like to measure my social housing portfolio against any private stock out there. I think, in essence, it is fairly well maintained with the limited resources that we do have available.

Mr. Leal: There was a handicap from day one.

Mr. Gage: Yes.

The Chair: Thank you, Mr. Gage, on behalf of the Social Housing Services Corp.

If there is no further business of the committee, I remind us that we are adjourned until Monday, February 6 at 10 a.m. in Toronto, not Peterborough. Thank you. The committee is adjourned.

The committee adjourned at 1609.

Continued from overleaf

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Loi de 2006 sur la responsabilité
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de l'énergie

Chair: Shafiq Qaadri
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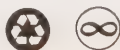
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Monday 6 February 2006

COMITÉ PERMANENT
DE LA JUSTICE

Lundi 6 février 2006

*The committee met at 1001 in room 228.*ENERGY CONSERVATION
RESPONSIBILITY
ACT, 2006LOI DE 2006 SUR LA RESPONSABILITÉ
EN MATIÈRE DE CONSERVATION
DE L'ÉNERGIE

Consideration of Bill 21, An Act to enact the Energy Conservation Leadership Act, 2006 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act / Projet de loi 21, Loi édictant la Loi de 2006 sur le leadership en matière de conservation de l'énergie et apportant des modifications à la Loi de 1998 sur l'électricité, à la Loi de 1998 sur la Commission de l'énergie de l'Ontario et à la Loi sur les offices de protection de la nature.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I call this meeting of the justice policy committee to order. We're here, as you know, to deliberate Bill 21, An Act to enact the Energy Conservation Leadership Act, 2006 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act.

CONSERVATION COUNCIL OF ONTARIO

The Chair: We'll now proceed to invite our first presenter. That will be Mr. Chris Winter from the Conservation Council of Ontario. Mr. Winter, just in terms of protocol, you'll have 20 minutes in which to make your remarks. If there's any time remaining in that 20 minutes, we'll distribute that evenly for questions and comments to the various members of the parties. I would invite you to begin.

Mr. Chris Winter: Thank you, Mr. Qaadri and committee members, for the opportunity to present to you today.

I represent the Conservation Council of Ontario, which is a provincial association of organizations and individuals that support conservation. We were founded in 1951, and I have been with the council for 22 years.

We currently host a new initiative in support of a provincial conservation movement. It's called We Conserve, and it's designed to involve leaders from all sectors in the transition to a deep-rooted culture of

conservation and a conserve economy. We Conserve is an opportunity to help Ontarians on the path to becoming better conservers through provincial campaigns and co-marketing conservation products and services and through social marketing.

I want to present to you today some results we had of polling commissioned with respect to public attitudes and commitment towards conservation in the home. The survey was conducted by Oraclepoll Research in December: 956 people were interviewed, 18 years and older, and the margin of error is considered 3.2%, 19 out of 20 times. There are three basic conclusions that came from this: (1) support for conservation is overwhelming; (2) personal commitment to conservation is also very high; (3) there is a very strong support out there for government leadership in setting efficiency standards and investing in conservation through financial incentives.

Conservation, and energy conservation in particular, is now a widely held cultural value. We have a culture of conservation out there. Ninety-three per cent of the respondents said that energy conservation is important to them, and 99% said they do the simple things, like turning off lights and appliances when not in use. Now, we all know that nobody is perfect in this and that even the best of us forget to turn off lights, but the significant point there is that almost everyone out there is making an effort to conserve.

When asked to rank the five power supply options in order of preference, green power topped the list at 1.7, conservation and efficiency was next at 2.5, natural gas and cogeneration was at 2.8, and then we get to nuclear power at 3.7, and the last one, keeping the coal-fired plants operating, was at 4.0. Clearly, Ontarians want to see renewable power and conservation at the top of the government's priorities.

In terms of personal commitment to conservation, we find that, over the past year, 72% of homeowners have installed one or more compact fluorescent light bulbs; 69% have draft-proofed doors; 64% have upgraded to more energy-efficient appliances; 40% have reported adding insulation to their home; and 37% reported upgrading insulation levels in the basement. That's quite a significant commitment on the part of the public.

In terms of public support for government leadership, we found a very high level of support for improved efficiency standards and financial incentives: 95% of respondents want new homes to be insulated to meet the highest energy efficiency standards; 93% felt that

renovations should also meet the highest energy efficiency standards; 89% support an energy efficiency label for new homes, similar to what is currently on appliances; 85% want the government to invest in incentives and low-interest loans for conservation; and 80% support increasing energy efficiency standards in the Ontario building code. So Ontarians are willing to pay a premium for energy efficiency, especially if it will result in low energy bills.

Those who were planning to buy a home were asked how much extra they would pay for energy efficiency. Sixty-five per cent said they would pay an additional \$5,000; on top of that, 12% would pay \$2,500. That \$2,500 invested in energy efficiency would be paid off within five years through lower energy bills and would provide long-lasting energy savings for homeowners and the province, and it would touch both heating and electricity.

In short, the Ontario public is committed to conservation and has taken many of the simple steps, and it will go much further with the right kind of support.

This is the kind of support we are looking for from the provincial government:

(1) Raise home efficiency standards in the Ontario building code to a minimum rating of Energuide 80.

(2) Require energy efficiency labelling of all homes, starting with new homes and incorporating existing homes on resale.

(3) Provide immediate financial incentives in the 2006 budget for investing in conservation, including PST exemption on conservation supplies and linking electricity surcharges to conservation financing.

(4) Invest in conservation and renewable power. Funding for renewable power and conservation should exceed the investment in fossil and nuclear power for the first 25% of each. A 25% reduction in energy demand by 2010 and a quarter of electricity demand from renewable power are both achievable targets, at a fraction of the cost of nuclear power.

Finally, I'd like to make some specific comments with respect to schedule A of Bill 21, the Energy Conservation Responsibility Act, which is before us.

First, you should include renewable energy as part of the definition of "conservation." Second, we fully support the designation of goods and services to eliminate any roadblocks in implementing conservation technology and practices. Third, we support conservation action plans—section 4—and further recommend that clause 4(3)3 include a requirement for conservation targets, as well as just the actions taken. Fourth, in section 6, the conservation council has noted in years past the absence of any rigorous environmental procurement policy within the provincial government and Management Board. We welcome these measures to require energy conservation in government procurement policies.

Finally, on section 7, conservation agreements, the conservation council looks forward to establishing a conservation agreement with the province with respect to the development of a provincial conservation movement. We feel that engaging Ontario's communities, non-gov-

ernmental organizations and business leaders in a broad-based conservation movement would be a unique area of leadership for Ontario.

I thank you for your time.

The Chair: Thank you very much, Mr. Winter, for your deputation. You've left a generous amount of time for questions and comments. We'll begin with the Tory side. We have about four or five minutes per party. Mr. O'Toole.

Mr. John O'Toole (Durham): Thank you very much for your presentation. I appreciate it and certainly have no problem with the four recommendations specifically raising energy standards in the building code. I think that those all make eminently good sense, I would say. More specifically, I think some of the things that the government is doing—they're mouthing the platitudes of the conservation culture, but I don't see any real action.

I think some of their incentives, which you mentioned in one of your recommendations, are extremely important. One of the first things they actually did was cancel the EnerStar PST rebate program, which I felt was rather more of a gesture than a substantive thing. I think they removed it just because the Conservative government had done it. But even there, what's missing in the whole debate is honesty and integrity. Any kind of plan is still kind of nebulous. Even if you look at the distributors' report, which I'm looking at, their comments on Bill 21 indicate that there's more mystery here than substance.

1010

In fact, I quote Robert Mace's concluding remark: "A common concern that has been raised by LDCs in their review of the specifications is the need for a" full "explanation of how the overall smart meter system will work," what its functionality is in terms of its implementation. This commitment is a lot of money going into shifting load around. There's not a lot of conservation content. It's more or less going to move load, as opposed to conserving load. I think that your mandate and that some of the suggestions you've made are quite valid. In fact, I don't think the government would have much trouble doing that.

When I go back to it, even their plan and your survey indicate the public's willingness to accept as much as \$5,000 of their own expenditure. That needs incentives and encouragement. That may actually conserve, if you meet some of those standards in the building code, etc. I look at it and see, even in the more recent report by Dave Goulding—you've seen that report—

Mr. Winter: Which one is that?

Mr. O'Toole: The outlook for reliability; the IESO report. It's clear in there that the government—in fact, I asked Dwight Duncan in the House if he would resign if he didn't make his 2007 commitment on coal. He obfuscated and sort of answered—pure smoke and mirrors to all of us. Much of what I hear and see is smoke and mirrors.

What the experts, the people who actually run the system, say here is, "This report confirms that fuel, staffing and maintenance are needed to ensure that Lambton units are capable of operation," and it goes on

to say that Nanticoke generators are “required either as generating sources or as non-coal burning synchronous condensers.”

So they’ve said that if they made the promise without knowing, then that’s irresponsible, but if they made the promise and knew, then that’s deceiving the public. I’ve been supportive in everything I say, and of everything I hear John Tory say, that it’s a matter of the timing. Elizabeth Witmer made that commitment on the Lakeview plant. Their commitments are all being fuzzed now.

I’m anxious to see what is going to happen in north-western Ontario. Perhaps Howard will take that up with Atikokan and Thunder Bay, because these are important considerations in the balance of the whole system on the transmission side.

I commend your input this morning as being objective and straightforward, with some real, workable recommendations. I’d be happy to hear your comments specifically on what measures, including tax breaks, would be your first order of business to engage the consumer in this cultural revolution.

The Chair: Thank you, Mr. O’Toole. You may want to take that up, if you’d like, Mr. Winter, in the following question. Mr. Hampton.

Mr. Howard Hampton (Kenora–Rainy River): Whenever the government is asked about energy efficiency and energy conservation, they immediately trot out smart meters. They say that smart meters are the key to energy conservation and energy efficiency. But I note that in your brief you hardly refer to smart meters. Can I ask you why that is?

Mr. Winter: I see smart meters as coming. It’s happening. I see smart meters as being an essential first step. Get on with it. My focus is beyond smart meters. My focus is on what the information will allow people to do. Essentially, smart meters are going to give people information. They are not going to be a conservation tool in that they will not physically result in any reduction; they might create an attitude shift in people. The key point we’re looking at in our submission, in our work, is that when people are engaged with that information, how do we help them? When they want to conserve, how do we help them?

That’s part of what we’re doing with our social marketing and our building a conservation movement. But it’s also why we’re focusing on things like the building code and financial incentives. When that information kicks into gear and people look at their bills and the information coming out and say, “I need to conserve,” the support system has to be there to help them conserve. Right now, it isn’t.

Mr. Hampton: The government has been talking about smart meters for three years, and I think many people were hoping to actually get some definition in this legislation. But when you read this legislation, what it says about smart meters continues to be very vague. This indicates that there’s still probably a lot of work to be done on that file. You might not see smart meters until 2008. What does a five-year program of talking and not getting much done say about energy efficiency?

Mr. Winter: What it says to me is that turning the ship around is a very long and slow process, perhaps too slow, in some regards. I would like to see us move faster. What else can I say? I would like to see us implementing some of the fiscal instruments and some of the efficiency standards immediately; the sooner the better. We need to find the low-hanging fruit and move on that. If smart meters will help in that, then I’m all for stepping up the timetable and getting smart meters in there.

Mr. Hampton: You make a number of recommendations in terms of energy efficiency: “Raise home efficiency standards in the Ontario building code to a minimum rating ... require energy efficiency labelling on all homes ... provide immediate financial incentives ... for investing in conservation....” Another organization, the Canadian Environmental Law Association, handed the government a detailed report in the spring of 2004, six months after they became government, setting out all these things. Yet there has been virtually no action on any of them. How can the government continue to talk about energy efficiency and conservation when these elementary things, these sort of basics, aren’t being done, haven’t been done and there’s no sign that they’re going to be done in this legislation?

Mr. Winter: That’s a very good question, and that’s all I can really say on that. There has been a lot of support for the current government with respect to their commitment to conservation and their commitment to a culture of conservation. That support begins to wear thin when we don’t see the commitment within government for leadership, and regulatory and financial incentives that would back up the statement about wanting to create a culture of conservation.

We’re prepared to give them some time in terms of setting in place a new framework for creating this change, but we also need to see prompt and immediate action on some of these key steps.

Mr. Hampton: In terms of the efficiency steps you’ve recommended, have you put dollar figures to any of them? In other words, have you seen anything that would tell you how much bang you would get for a buck if you put a billion dollars into incentives for people to re-insulate their homes or install the highest efficiency appliances—what people would probably invest themselves, in order to carry out what they obviously want to do, as your polling indicates?

The Chair: I need to intervene there, Mr. Hampton. Thank you for your questions and comments. We’ll move to the government side. Mr. Delaney.

Mr. Bob Delaney (Mississauga West): A very interesting brief. Thank you for coming.

I’d like to ask you a couple of clarification questions on your survey. Could you tell me how your sample was chosen?

Mr. Winter: It was done by Oraclepoll Research, using the best statistical survey methods. They did a random poll of people 18 years and over across Ontario.

Mr. Delaney: So it wasn’t a controlled sample chosen, for example, from among people who have expressed an affinity—

Mr. Winter: No.

Mr. Delaney: Having bought a new home in the past year, I was actually pleasantly surprised to see how many conservation features were built in standard and how many others were available for what was really a very nominal cost. So I found your data very interesting.

You mentioned in your survey data that only about 8% of survey respondents were planning to buy a new home in the next 12 months. Did you measure what percentage of respondents would be willing to pay in the range of \$10,000 to \$20,000 for the retrofit of an existing home?

Mr. Winter: No. Because there is a limit to what we could do in the poll, we focused on new homebuyers.

Mr. Delaney: Okay. What survey data does your organization have, whether from the survey from which you've excerpted or other data, to measure awareness of the support for load management through such strategies as smart meters, which you just indicated you support in your discussion with Mr. Hampton?

Mr. Winter: To be frank, we don't have much of a budget to do this, so we haven't had the opportunity to do any detailed surveying on a number of issues. This is the first one we have done with respect to public attitudes.

Mr. Delaney: What would your research priorities be in the next year?

Mr. Winter: Our research priorities in terms of public attitudes?

Mr. Delaney: Yes.

Mr. Winter: They would focus on things such as the interest and capacity of people to commit to conservation and renewable energy, the degree to which people are willing to invest their own time and money, how much they would put up in terms of their own money, and the role that government or other subsidies could play in increasing that uptake.

1020

Mr. Delaney: Have you done any research work with developers and home builders to determine from the people who sell homes day after day just what they find are the market trends and the sensitivities among their buyers?

Mr. Winter: There are a number of organizations and a number of companies, and you may have found one of them that is taking a lead on marketing and incorporating energy efficiency into homes. What we're looking for is raising the bar and making that a standard. There's a group called EnerQuality in Ontario that is working with home builders to give them a marketing advantage by incorporating the best in energy efficiency. What we would like to see is for that to become the norm in home construction.

The Chair: There's a few seconds left if any government member would like to—that's fine. Thank you very much, Mr. Winter, for your deputation as well as for your materials.

SMARTSYNCH LTD.

The Chair: I would now invite our next presenter, Mr. John Feltis of SmartSynch. As you've likely seen the

protocol, Mr. Feltis, you have 20 minutes in which to make your presentation, with the time remaining to be distributed evenly amongst the parties afterward. Please begin.

Mr. John Feltis: Thank you for inviting me in this morning. My name is John Feltis. I'm vice-president of SmartSynch Ltd. At the outset, I would like to show my appreciation for your having invited us and demonstrate SmartSynch's commitment to the Ontario market. As we're all aware, energy conservation is at the forefront of everybody's mind and, with that, it's a major component of the province's plans towards dealing with Ontario electricity and energy supply problems moving forward.

At SmartSynch, we're very excited about the opportunity of working with the province, the Ministry of Energy and, of course, the LDCs, and are looking forward to providing our products and solutions to support Bill 21, the Ontario smart metering initiative, and supporting the LDCs as they promote an energy conservation culture to their consumers. The one thing I'd like to leave you with before moving on is that all SmartSynch products comply with the Ministry of Energy AMI draft specifications as released.

As far as SmartSynch's market position, we are a global leader in wireless smart metering technology for the utility industry, and that's North America-wide. I'd just like to take a moment to distinguish between smart or interval metering and AMR. AMR traditionally has been a way that the utilities could collect or gather normal consumption data from customers over time. An interval or smart meter is actually collecting data that is correlated to a time of day, whether that be time-of-use buckets or on an interval-by-interval basis. In Ontario, they're asking for 60-minute interval data at the residential level. Typically, it's been a 15-minute interval at the commercial-industrial end.

As a company, over the past five years we've deployed more interval smart meters with embedded wireless communications than all other companies combined. That is in the commercial and industrial sector. Being embedded means that the communications module is underneath the physical glass of the meter so there are no external modems and that type of thing to connect. As far as a market presence, we are in 50 major utility customers throughout North America, 12 of them in Canada itself. We've sold 90,000 wireless smart meters and all of these smart meters are the same ones that are used in Ontario, so all of them do comply with the standards.

As far as some of the milestones of the company, we were the first in the world to release an ANSI GPRS meter. With our partners, Rogers Communications, we were awarded the first major smart meter pilot in Ontario by Hydro One, and that was a 25,000-residential smart meter award. Rogers was the lead, and we partnered with them on that proposal and were successful with them.

In other markets, an example is California. When they had their energy crisis in 2001, we were awarded 95% of the commercial-industrial meter business in that market and provided them with approximately 28,000 commercial-industrial meters so their clients could

actually understand when they were using the power and could either shift load or conserve energy. We are the primary commercial-industrial wireless smart meter provider for three of the four top utilities in California, being LADWP, PG&E and Southern California Edison. As far as Canada goes, on page 6 you can see our Canadian customers to date. We've got a dozen customers. I already mentioned Hydro One. We've got Toronto Hydro—I won't read them all, but we're really gaining quite a presence in Ontario.

The major distinguishing factor of our company is that our sole focus is smart meter or interval metering. We do not actually build meters; we're meter agnostic, meaning that a customer or a client can actually select a meter that perhaps they're using today in other applications and don't have to change to a specific meter provider just to gain the benefits of the communications or the smart metering. If their staff is already very accustomed to a certain type of meter, then they can continue using that. They just have to purchase a SmartSynch module under glass and they're ready to go.

So why SmartSynch? We're in what we consider a market leadership position. We use standardized methodology when building our products. As far as the communications technology, we use proven networks that are out there: GPRS, airBand; PCS as well. GPRS comes through our partner, Rogers. All our devices are built on ANSI standards, which is a sort of quality assurance; they're built to a North American standard. We use very common technologies such as J2EE and we've got IP-based devices, meaning that you can interrogate with them directly without having to go through phone lines.

Our product architecture, as I indicated, is that we are meter agnostic and we can provide our modules with a variety of meter manufacturers. Our sole focus is on communications and smart metering.

As far as the company, we do reinvest a lot of our revenue into research and development to ensure that our product is improved. We have more products available to help customers with their needs as the markets evolve. To go along with our leadership, we've got proven installations throughout North America.

We do have a number of business partners that help us moving forward. We've got Siemens and Motorola, which provide some of the components in our communications module. As far as network providers, we have partnered with Rogers and PageNet Canada. We've got some meter partners, being Itron and Elster, and our modules integrate to them.

We're a company of about 40 people, very innovative and experienced. Our sole focus has been on wireless networks and smart metering. We actually introduced our first smart meter in the year 2000. Our core competency, which we never deviate from, is managing data over public wireless networks.

As far as cost of ownership, our suggestion is to buy the meter and don't buy the network. There are a lot of really good networks out there that we're all familiar with, with cellphones and BlackBerries. You can use that same type of infrastructure to transmit meter data,

without having to build out your own infrastructure. Our meters are plug and play. That's a pretty common term these days, but what it means is that you simply plug the meter into the socket, it auto-registers with the network and away you go. It detects coverage, and everything's ready to go.

1030

Some of the advantages of a public wireless network versus that of private networks are that, with a public wireless network, you can piggyback on the billions of dollars that have been invested by those companies. Those networks have been built to do other things, such as cellphones, BlackBerries and other types of data transmission. Why not piggyback on that—you're getting best-of-breed networks—and just leverage that moving forward to benefit your business requirements rather than building your own proprietary network?

Looking forward as well, as you get integrated and use different networks, you can benefit from the competitive forces that are natural out there in private industry, in that you're going to get the other carriers competing for price and competing for your business, which would make it very cost-effective.

If an LDC happens to build their own network, then you have to worry, as you expand that to cover your entire customer base, about capital costs. If you look at using a public wireless network, chances are you've got coverage in your area already.

Another benefit to using the public wireless network is that you can off-load the operation and maintenance burden. It's not just a matter of putting a tower up and, bang, you've got signal, and you don't have to worry about it for 20 years; there are maintenance and operational burdens on the LDC to build out that network and to keep it functioning at its peak performance. These public wireless networks are out there; that's their business. If their network goes down, they have no revenue, so they spend a lot of effort ensuring the network is optimized for the best traffic and that it's up and running as much as 99.9% of the time.

Another thing with using a public wireless network is that you can capitalize as technology evolves. If, say, today you're using GPRS and you want to move to something else as technologies change, such as Wi-Fi or Wi-MAX, the private wireless networks are going to evolve with new technologies. That's their business. You can follow on that train, if you will, in order to benefit from it.

I'd like to thank you for the opportunity of speaking with you. I'm open to any questions.

The Chair: Thank you, Mr. Feltis. We'll start with the government side; about three minutes each. Mr. Leal.

Mr. Jeff Leal (Peterborough): Thank you very much, Mr. Chair.

Mr. O'Toole: It's the NDP this time.

The Chair: I'm sorry; you're correct. I think I'm under-caffeinated still. We'll start with the NDP side; three minutes each.

Mr. Hampton: I want to thank you for your submission.

The government has been talking about smart meters for three years. I want to ask you this question: Have you seen any cost-benefit analysis for smart meters in the Ontario context? In other words: "This is what it would cost and this is what it would generate in either peak reduction or reduction overall or peak-shifting." Have you seen any credible studies?

Mr. Feltis: I have not personally, no.

Mr. Hampton: One of the things we heard last week, and we heard it especially from the local electricity distributors—Toronto Hydro, Hamilton Hydro etc.—is that they suspect that doing all of the work around smart meters is probably going to cost about \$2 billion.

Mr. Feltis: Yes, I've heard that figure as well.

Mr. Hampton: Do you think that's a credible figure?

Mr. Feltis: I think so, yes.

Mr. Hampton: I just want to ask you a question from the perspective of your company. If you were going to put \$2 billion into something, before you did that, wouldn't you want to see a cost-benefit analysis, like: "What am I going to get for my \$2 billion?"

Mr. Feltis: Certainly. I know that part of any business is to do a business case which shows you a return on your investment.

Mr. Hampton: The government's been talking about something that will cost in the range of \$2 billion—could be a little less, could be a little more—yet the government hasn't produced any kind of study that says, "This is what we're going to get. This is what we're after. This is what the benefit will be in terms of reducing peak consumption, reducing overall consumption and shifting peak consumption to off-peak hours." From your perspective, how would you explain that—a \$2-billion project, but the business case hasn't been done to support it?

Mr. Feltis: I cannot explain. I'm not privy to that information. I can only assume that perhaps there have been studies and analyses done on the benefits of such an intense program. I'm not privy to that. That's not saying it hasn't been done.

Mr. Hampton: Just about everybody I've asked over the last two days—no one has seen one. The only thing that comes close is if you look at the Ontario Power Authority report, which was released just before Christmas. It says that for its planning purposes, in terms of supply planning, they think that the government's smart meter scheme, as proposed so far, might result in a 500-megawatt reduction in peak demand. So you invest \$2 billion and you get a 500-megawatt reduction. That's the only thing that's out there right now.

The Chair: I'll need to intervene there, Mr. Hampton. Thank you for your questions and comments.

I'll now move to the government side, and you've got three minutes. Mr. Leal.

Mr. Leal: As you know, we're still waiting for the cost-benefit analysis for the acquisition of a Costa Rican rainforest, but some day maybe we'll get that.

I do have a question. Thank you very much for your presentation this morning. There have been some questions with regard to smart meters and climate changes

and climate conditions and how they'll stand up. Secondly, in terms of data collection, if an outage occurs, potential customers have said, "If there's an outage, how can I still get accurate data and be sure that the information when I receive my bill would be accurate and takes into account any outages that might occur?" So maybe we'll start with the climate one first and the durability of smart meter systems themselves.

Mr. Feltis: Sure. We put all of our modules and the meters themselves into an environmental chamber for testing. The meters themselves are tested from minus 40 to plus 70, I believe—I could be wrong—and the modules are tested likewise.

Regarding your question about outage and the accuracy of the data coming back, our meters have a couple of unique functions comparable to others in that our module is simply a module, and what it does is gather the data from inside the meter. The meter, in order to integrate to our module, needs to have its own mass memory, meaning that it stores all the information locally, about a month or so worth of data, depending on the configuration. So what happens is that when the power comes back on-line, all that data is still resident within the meter, and the system simply recalls it. That provides a couple of different benefits in that (1) you can be sure that your data is always at the meter in the event of a power outage, and (2) if for some reason there's a communication failure and you need to get that data, you can always go to the meter itself and get it.

Another unique feature that ours have on power outage is that we have built in what's called last-gasp technology, in that, when the power goes out, the meter actually sends a signal back to the home base and says, "I'm going out of power." That can be sent to a group or an e-mail list specifically to let them know. Here again, when the power comes back on, it sends out a signal and says, "I'm back on."

The Chair: Thank you very much. Regrettably, there's no more time for the government side.

I'll need to move to the Tory side. Mr. O'Toole.

Mr. O'Toole: Thank you very much for your presentation. I'm pleased to see you're working with Veridian, which is a company that sort of started in my area: a lot of success for John Wiersma as well as Michael Angemeer.

I'm quite interested. I would say that my understanding, as limited as it might be, is that these are really time-of-use meters. They're not really smart meters, as I understand it.

Mr. Feltis: You're speaking about our meters themselves?

Mr. O'Toole: No, no, the government's initiative, as I understand it, in the pilot projects that they've set up. Is that not what it is? It's going to say I used 100 kilowatts at 2 in the afternoon or 2 in the morning, and there will be a regulated price plan tied to those times of use. That's really what it's meant to do.

1040

Mr. Feltis: That's true. There is an option for the LDCs, according to the specifications. You can bring

back time-of-use data, meaning consumption data within certain buckets, whether it be 8 in the morning till 11 p.m. etc. But a portion of the client base has to have what they call interval data, meaning the usage by hour by hour by hour. So our meters provide that granularity of hour-by-hour data, and systems can then roll that up into time used—

Mr. O'Toole: Yes, I'm very happy with understanding that yours have more functionality, perhaps, than is currently envisioned. I'm concerned. There was and still is a working group in the industry under the LDCs looking at this. In fact, Robert Mace has reported to continue to work with the Ontario utilities' smart meter group, who have already done extensive work on developing and testing various meters. He goes on to say, "A common concern that has been raised by LDCs in their review of the specifications is the need for a fuller explanation of how the overall smart meter system will work." These are the people who are actually going to have to deliver this. This is what their concern is in their monthly report. "Distributors are finding it difficult to provide a complete analysis of the requirements of the AMI functional specification without a thorough explanation of the requirements for the total system—especially communication systems and how the meter data depository will function."

They're moving ahead with some pilots. They are going to collect some data. They've committed to implement some 8,000 or whatever in the next short time. This is very poorly managed. Mr. Hampton has pointed out that they've got no cost-benefit analysis that they have shared with anyone. Certainly, as the former critic in the area, I see nothing here except that the consumer is going to get some information. They could send a letter saying, "Get rid of the bar fridge," and these very simple things; it would cost them a stamp. This is going to cost \$2 billion and it's going to cost \$8 to \$10 a month to start with. It's not going to be optional, and it's going to be another charge on a bill that's already high. This is a poorly delivered—

The Chair: Thank you, Mr. O'Toole, for your questions and comments.

Mr. O'Toole: Chair, I have a question for the researcher. Mr. Hampton raised it. I want tabled with this committee any research on cost-benefit analysis—this is for research—on smart meters, on Bill 21. This should be open to the public.

The Chair: Legislative research duly notes your point.

On behalf of the committee, I'd like to once again thank you, Mr. Feltis, for your deputation.

EMPCO

The Chair: I would now invite our next presenters, and I understand they have a PowerPoint presentation: from EMPCO, Mr. Edgar Wünsche and Mr. Sergiy Rogalski.

Gentlemen, while you're getting to that PowerPoint, if I might just invite the committee to attend to some busi-

ness. We received through e-mail a request to add one presenter to our deputants tomorrow in Simcoe, which will raise the number from five to six. The organization is called Reduce the Juice, an energy conservation initiative for youth. I would ask if the committee is in favour of allowing them to testify before us. All those in favour? Any opposed? Carried, and noted.

Gentlemen, if you are ready, we will begin.

Mr. Edgar Wünsche: Good morning. Thank you for allowing us to speak about energy. I have to say that micro-electric energy conservation, which is part of the smart meter, is not in our line of activities. Nevertheless, in principle, EMPCO supports the idealistic aim of smart metering. We don't know anything about it.

However, it is our understanding, based on my personal track record of work—I was for 10 years in charge of the energy department of Czech Praha in Czechoslovakia, with 10,000 people in energy, and we have tried also to save energy in every possible way. However, it is our opinion and our understanding that Bill 21, as presented, is an attempt to legally create a culture of conservation in Ontario. In our guarded opinion, the culture of conservation cannot be realized by legislation. It is a well-known fact that the conservation of all human necessities and essentials, including all kinds of energy, is well embedded into the daily lives of societies and nations having overall low life standards. The societies with higher standards of life do not adhere to a conservation culture; to the contrary, waste is considered normal. We have that, for example, here in Canada.

I'm taking this opportunity to talk about two other subjects: the combination of the statement of the Honourable Minister of Energy, Mrs. Cansfield; and then last week the Ontario Power Authority supply mix report and the final report to the Minister of Energy by the Electricity Conservation and Supply Task Force.

On December 9, it was stated by the Ontario Power Authority that they "recognized three established Ontario current government policies: creation of a conservation culture; preference for renewable sources of energy; and replacement of coal-fired generation for environmental and health reasons."

A further quote is from chapter 9 of the report of the OPA: "As noted previously, the elimination of coal-fired generation, a policy set by the current government, was used as a starting point by the OPA. The report notes that a number of events must come to fruition if the province is to meet the coal phase-out timetable. As such, the OPA"—Ontario Power Authority—"is recommending that the replacement of the coal-fired generating plants needs to be monitored closely for circumstances that may require the development of alternatives. To have the required capacity in order to phase out coal-fired generation, the Ontario Power Authority estimates that a capital investment of \$70 billion will be required. The bulk of this investment will be nuclear and renewable generation."

Furthermore the final report to the Minister of Energy, the Honourable Dwight Duncan, in January 2004, of the

Electricity Conservation and Supply Task Force executive summary states: "A key concept, going forward, is that demand reduction should be given the opportunity to compete with supply side alternatives, and be evaluated on a level playing field." In addition, they state: "The government sees the health and environmental consequences of burning coal with existing technology as unacceptable and plans to phase out Ontario's 7,500 megawatts of coal-fired generation by 2007. Consequently, the need for replacement power in the near term is immense. Some members of the task force believe that the phase-out poses large economic costs and that the environmental benefits can be best achieved by other means."

Furthermore, on point 24, with regard to Ontario Power Generation, they say, "The government should maintain existing coal-fired generation units as required and until adequate new power supplies and demand reduction measures are in place. Having made the decision to close coal-fired generation, the government should quickly develop generation, transmission and conservation alternatives including clean coal technologies, if the latter are feasible within the target emissions levels."

All of the above is beyond any doubt supporting a policy and strategy of upgrading air-burning, coal-fired electricity generating plants with clean, coal-fired electricity generating plants using combustion-quality oxygen and pressure swing adsorption vacuum, 95%, as oxidant and propellant for temperature-controlling, partially-high-concentration recirculated CO₂.

I'm going off the text now. We have been fighting for four years to introduce replacing electric energy in Ontario, which is very inefficient, with natural gas and coal-fired metallurgical furnaces. Unfortunately, the steel industry is still making industries very conservative, ultra-conservative, and they always say, "Where can we see it?"

1050

EMPCO is a small company of about 50 people. We now have the means to invest about \$700,000 to prove it. However, once it's proved—you have in our presentation documents of how much is going to be saved. As I say, I'm also a member of VDEh in Germany, UKAS, are very successful in our working on reducing carbon dioxide. We are all working on carbon dioxide, but I want to, for your information, say that eventually methane, which is partially produced also, is about 70 times worse than carbon dioxide.

Actually, as a matter of fact and interest, water vapour contributes the most to the greenhouse effect, not so much carbon dioxide. On top of it, nitrogen oxide, which comes from combustion of the coal with air, is about 2,000 times worse than carbon dioxide for our health. So we have proven—and one of the members here on the committee has seen with his own eyes how it works—that we can practically eliminate, for all intents and purposes, nitrogen dioxide which, in combination with particulate matter and daylight, creates ozone, which is

killing—nothing else. Carbon dioxide is not killing. It is trumpeted, but it's not true. So that is the story.

I would like to say something which you're obviously going to laugh about, because I'm saying a political energy policy and strategy for energy—you see, in Europe, we have 42 million euros from the European Commission for developing internal carbon dioxide and sequestering it. Now, here we don't have any support of the government whatsoever in proving many things. We are saying that small businesses are the spine of the economy, the driving force in the economy. However, only large companies are capable of putting this into operation. We've been approached by some of them, but they are almost at the level of the venture capitalists who want to take your skin off before you get anything else. So we don't go for them.

I'm only saying that all energy options must be kept open, and no energy generation technology should be idolized or demonized. That is on account of saying that carbon dioxide—and that coal is dirty. Coal is not dirty. Air is dirty—air which we are using for combustion. If we use oxygen, we have wonderful, clean fuel. Especially, we have succeeded, with Saskatchewan charcoal, to reduce even the nitrogen dioxide to practically non-existing.

So I would like to appeal to you people to somehow review the philosophy of supporting, because tax incentives are no good, because you have to have money to achieve the tax incentives or a return on the taxes. If you don't have the best idea, it's going to die. Other governments—I've worked in Japan and around the world. We are supplying electrometallurgical equipment around the world. Everybody is clandestinely or openly supporting loan guarantees or incentives to the industry. In Germany they say, "A working man feels good, pays taxes and doesn't have time for crime. An unemployed guy feels rejected, doesn't pay taxes and has too much time for crime."

The federal, regional and provincial governments and their agencies must adopt a more pragmatic approach with respect to the financing of energy systems. Japan realized, Germany realized, France realized, the Italians, and the English are now coming to it, that they have to be the leading force and aggregate the industry under the patronage of the government, so that the government knows what is going on, and also to succeed.

The rest of it is in writing. I would like very quickly to show this graph. You can see energy efficiency in steel-making: I don't know if you can see it very well, but it is quite nice, at 100% on the left with electric energy efficiency and 17% on the end. When you use pulverized core and natural gas, you finish with 66% efficiency, and you also have the benefit of reduced pollution, reduced gases. As a matter of fact, right now, with an American company, we are in the process of saving about 30 kilowatt hours per tonne and reducing completely the nitrogen oxide, outside too, out of the furnace, by sealing the furnace.

We are engineers in energy. We are not working with 200 or 300 kilowatt hours; we work with millions of

kilowatt hours; therefore the slightest improvement is important. For example, we had to finance the sealing of the furnace ourselves. Nobody could do it. Unfortunately, in steelmaking there is the philosophy, "Where can I see it? As soon as I see it working somewhere else, I'll be the first to be in, at the first second."

There is one more little presentation. I want to show you what natural gas and oxygen can do. Run the film.

This is in our place. John O'Toole has had a chance to see it with his own eyes—no electrodes, no transformers, no electricity transmission losses, more efficiency, because from 17% efficiency we go to 66%. But nobody wanted to help us, only the Germans. There were primitive trials, and as soon as the Germans saw it, they said, "We're taking this." We had to do the laboratory preparation and melt—when they saw it, they said, "That's it," because for over one tonne of graphite electrodes, it takes 4,000 kilowatt hours of electricity to graphitize, and you have about two pounds. You see how blue, how clean the steel is, with oxygen and natural gas coming out. It's only 400 kilowatts. We can show that we have already built for the former Lasco, for Chaparral, for US Steel and for South Africa—40 megawatts, and no problem. That is the charge. You see, it's very primitive. This shows how it works, but government doesn't have a policy.

I tried, via the ministry of development when Mr. Flaherty was in charge—"We don't support that." You see the blue core? That is not edited. This is how it melts. It's much more efficient electrically.

Thank you for the time. I'm ready to answer any questions.

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The Chair: Thank you very much, Mr. Wünsche. We have about a minute per party, and we'll start with the government side.

Mr. Leal: Thank you very much, sir, for your presentation. Dofasco in Hamilton recently went through an upgrade and retrofit of their number 2 operation. Did they look at your technology at all? I think that was a rather large upgrade, and Dofasco have always been leaders in the industry.

Mr. Wünsche: We are supplying Dofasco with all the components for their electrical furnaces. What you're talking about is a BOF site. That has nothing to do with electric arc.

However, the question is—habit is like an ironed shirt: People don't want to take it off. They want to see it somewhere. Germans accepted it as engineering, our theoretical results plus the practice. You can see, that steel being melted.

Mr. Leal: My colleague Jennifer Mossop has a question for you, sir.

Ms. Jennifer F. Mossop (Stoney Creek): You mentioned early on that we are trying to create a culture of conservation and that you recognize there is none in this part of the world, that it's more a culture of waste.

Mr. Wünsche: Yes.

Ms. Mossop: What do you think the best approach is in trying to turn that around, to get away from that sense

of entitlement people have to just use and have no sense of responsibility for our resources?

Mr. Wünsche: Make them hungry. I was hungry in my life. I know what it is. Because, you see, the waste is inherited—you know, my children have waste, and I hate it.

Ms. Mossop: Do you think a campaign of education will be of assistance? It has helped in other areas. People never used to wear seat belts—

The Chair: I'll need to intervene there, Ms. Mossop. Thank you for your question. We'll move to the Tory side.

Mr. O'Toole: Thank you very much, Mr. Wünsche, for your presentation this morning. I just wanted to re-inforce that I have been to your facility and do represent this as innovative, especially in the industry. The point I want to make is this, for the record: All the attention on demand management at the residential side with smart meters is looking at the least payback of all these solutions. When you look at the profile of energy, it's my understanding that 60% to 70% of all the consumption is the economy. It's the steelmakers, the auto makers, the petrochemical—those are the big demand-response programs we need to lock in where you can deal with the low-hanging fruit. In my view, if you look at the steel-making, auto making and pulp and paper industries, the struggle the manufacturing sector is in right now is costing about 80,000 jobs. Without the economy, you won't need excess capacity on the generation side. If there's no economy, then this problem will take care of itself.

I want to make sure that what you're offering here is a chance for industry—manufacturing, steel specifically—to use both the efficient technology you're recommending, as well as looking at the environmental consequences of waste and poor efficiency. Is that not what your presentation—

Mr. Wünsche: You're perfectly right. The question is that this system, only for Ontario, would save about 450 megawatts for free.

Mr. O'Toole: Just by becoming more efficient.

Mr. Wünsche: The companies are going to make money too. However, they want to see it operating, and we need help in this respect.

The Chair: Thank you. Mr. Hampton.

Mr. Hampton: Over the last two days, other presenters have come forward and said, "Look, people could make their homes more energy efficient, but government has to provide some incentives." The actual cost of installing the energy efficiency equipment is in many cases too expensive for individual homeowners. What I think I hear you saying is that we could make huge gains in energy efficiency in steelmaking and in other kinds of metal refining, but that there has to be some kind of financial mechanism to get this started—

Mr. Wünsche: Yes.

Mr. Hampton: —that, by itself, your company doesn't have the capital money, that many other companies out there don't have the capital money, and that if government is really serious about energy efficiency, it

wouldn't blow \$2 billion on smart meters; it would be making the investments in these kinds of energy efficiency technologies.

Mr. Wünsche: Mr. Hampton, you are perfectly right, plus this one: that once we prove it—you see, my patent is the split shell. It was in Lasco in Whitby. When we put the first one, we had, for three years—every two weeks only five people came to see it from all around the world, and we sold so much. For seven years I choose my customers—innovation is where we can do it. The Germans understand that; we don't yet. The German government understands it, and that is the important part to transfer.

You probably remember me, because I spoke to you on television—my ideal is to abolish the impunity of ignorance. Do you remember?

Mr. Hampton: Yes, I do.

The Chair: Thank you very much, Mr. Hampton. Thank you, as well, gentlemen, for your deputation from EMPCO.

CARMA INDUSTRIES INC.

The Chair: I would now invite our next presenters, from Carma Industries—Messieurs Williams, Galonski and Pilkey. Gentlemen, if you might come forward and introduce yourselves for the purposes of recording Hansard.

Mr. O'Toole: Chair, if I may indulge upon the committee, I'd encourage the members of the committee to take advantage of the invitation here from EMPCO. I just want to put that on the record. I'm sure they're quite interested in entertaining the committee. It's only in Whitby. It'd be worth seeing, because we are talking about a major industrial suggestion here. I'd encourage the parliamentary assistant, Mr. Leal, to initiate that.

The Chair: Thank you, Mr. O'Toole.

Gentlemen from Carma Industries: As you've seen, there are 20 minutes in which to make your presentation, the time remaining to be distributed afterward to the various parties, beginning now.

Mr. Mark Galonski: Are you wanting us to introduce ourselves?

The Chair: Please.

Mr. Galonski: My name's Mark Galonski. I'm controller of facilities for the Kawartha Pine Ridge District School Board.

Mr. Ross Pilkey: I'm Ross Pilkey. I'm vice-president of Carma Industries.

Mr. Rick Williams: I'm Rick Williams. I'm president of Carma Industries. I'm going to stick to my text here, because if I don't, I'll stray off topic and lose my train of thought. So let me follow through, and hopefully there'll be five or 10 minutes for questions.

First of all, we're pleased to be here, obviously, to present our submission regarding Bill 21 to the standing committee on justice, and wish to thank the committee for its kind invitation. I would like to introduce our group—which I've already done: Mark Galonski, Ross

Pilkey. One other gentleman who couldn't be here because of timing is Wayne Proulx. He's manager of energy and environmental services for GWL Realty Advisors. I might point out too that Mark Galonski is in charge of facilities for the Kawartha Pine Ridge District School Board. He's also the president of the OASBO operations maintenance committee, so Mark has a voice with about 50% of the school boards across the province.

Carma Industries is a Peterborough-based manufacturer of Measurement Canada-approved sub-metering and smart metering products and software. During the past six years, our market focus has expanded into the development of utilities-monitoring technology that allows our customers to monitor and reduce utilities use. Building operations staff have embraced monitoring and graphic profiling of utilities as technology that is required to meet the emerging energy conservation challenge.

The critical issue is ownership: giving front-line operations personnel the tools and a program that allows energy conservation to become part of their daily routine. Secondly, the tools and program have to be convenient to use and understand. Finally, the initiative has to allow real-time benchmarking to demonstrate improvement. Unless the objective of utilities reduction can be documented and displayed, the personal satisfaction of making energy improvements is difficult to establish and perpetuate.

In the case of school districts, our utilities profiling program was launched in 1999 in collaboration with the York Region District School Board. A single-school pilot project provided access to information that led to impressive reductions in electricity use. This pilot program justified a further investment in 29 additional schools, which were chosen on the basis of diverse characteristics, which included age, type of construction, type of heating and the inclusion of mechanical cooling.

In the year 2000, the 29-school project was completed, allowing the launch of two main school-district initiatives. First, the focus at head office was in preparation for electricity deregulation by modelling the electricity profiles for each school type and extrapolating results over all schools to develop a York Region District School Board-wide electricity profile. With accurate portfolio-wide electricity use profiles, optimum electricity rates would be available from electricity retailers. The aggregate profiles continue to be of significant value in preparation for an open electricity market in Ontario.

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The second initiative involved training and implementation of an energy reduction program through front-line staff using graphic profiles of electricity use. Because this program was added to existing staff responsibilities, the program had to be efficient to use. For that reason, sub-meters were installed in addition to the main electricity meter to allow prompt isolation of areas of waste. Electricity savings realized were a combination of daily operational procedure changes, building automation schedule changes and quiet-hours equipment inspections to confirm additional savings opportunities.

Of particular importance was the growing interest among front-line personnel to outfit more schools with graphic profiling equipment. Since the initial 30-school implementation, an additional 35 schools have been outfitted with graphic profiling. Almost all secondary schools are now equipped with sub-metering, and a new wide-area network implementation will allow students, teachers and operations staff access to real-time electricity graphic profiles. Curriculum for selected grades will have energy savings integrated into their studies. This program will help shape an evolving energy conservation culture in York region.

Many other Ontario school districts have undertaken energy profiling programs. The Toronto District School Board launched a real-time energy profiling pilot program that included 31 schools; the Kawartha Pine Ridge District School Board has completed two schools; and seven other school districts have implemented single-school pilot projects. The monetary success of individual initiatives has encouraged other Ontario school districts to invest in graphic profiling tools that support the implementation and perpetuation of energy conservation.

Ontario school districts possess great potential in support of an Ontario electricity demand-response program. School activity is reduced in the summer season, when mechanical cooling is operating at peak capacity, and during early evening peak-load periods on business days between 4 p.m. and 8 p.m., when residential use is at its maximum. Again, school districts are well-positioned to be key contributors to the objectives of Bill 21.

The commercial office building market has historically operated facilities to meet optimum tenant environmental requirements at all times. Individual tenant sub-metering has been helpful in charging tenants on a user-pay basis; however, the need to reduce utilities usage has been concentrated on a few of the users. Building operations staff have used best efforts to maximize the efficiency of automated building control systems. However, energy waste can persist for several months before utility invoice review triggers corrective actions.

In 2004, GWL Realty Advisors Inc. introduced a new approach to environmental and energy saving known as TEMS, tenant energy management service. This program focuses on giving tenants web access to smart meter graphic profiles. The starting point was the installation of a tenant sub-metering system which records all sub-meter information in 15-minute intervals. Interval data is uploaded to a password-protected website, allowing each tenant convenient access to graphic profiles that display their own daily electricity consumption for each sub-meter. The web browser allows convenient aggregation of multiple sub-meters that can be displayed weekly, monthly or for any period of time selected.

The TEMS initiative is the first program of its kind in the Canadian commercial office building market. Tenants are now empowered to become part of the energy conservation program. Tenants can collaborate with building operations managers to challenge their high energy use profiles and change behaviour in the interests of optimized energy utilization.

Within our pilot project in Markham, Ontario, tenant groups from seven properties were invited to an introductory meeting. Subsequently, tenants have requested assistance in better understanding their graphic profiles and taking action. Some tenant premises have been audited, resulting in a wide range of no-cost and low-cost savings opportunities.

Ultimately, all tenant premises will receive operational audits and energy curtailment recommendations. Some operational audits may lead to energy retrofit assessments, giving tenants an opportunity to invest in cost-effective equipment retrofit. The program is evolving and has identified differences in electricity costs of \$1.10 to as much as \$7.90 per square foot per year among tenants. With the recent implementation of monthly tenant billing, we expect to receive more tenant requests to perform operational audits and tenant consultations.

Again, because this program has been added to the already busy schedules of all participants, it had to be easy to use and understand. Tenants and building operations managers are already fully engaged, hence the emerging interest in automated graphic profile variance reporting. On the basis that a floor of an office building is audited and optimized, it is important to remain at optimum efficiency.

In support of evolving customer needs, new software has been developed to offer our customers the peace of mind that best practices will be perpetuated. We recognize that our customers' investment in smart metering technology has to be future-proofed. Although technology will advance rapidly, we believe our customers' investment and ongoing savings have to be preserved.

We believe our graphic profiling and web posting developments could form the basis of a province-wide energy conservation program and expedite the implementation of an energy conservation culture in Ontario.

On behalf of Carma Industries Inc., York Region District School Board, Kawartha Pine Ridge District School Board and GWL Realty Advisors Inc., we applaud the implementation of Bill 21, the Energy Conservation Leadership Act, and look forward to assisting in the acceleration of an energy conservation culture in Ontario. Thank you.

The Chair: Thank you, Mr. Williams. We'll begin with the Tory side. Mr. O'Toole, about two and a half minutes.

Mr. O'Toole: Thank you very much, Mr. Williams and Mr. Pilkey, and Mark as well. I remember quite distinctly meeting with you when I was the energy critic. You worked very co-operatively with Jeff Leal, and here today, putting forward, I think, a very important tool in energy conservation in the broadest sense but, more specifically, in efficient use and monitoring—that's your product—that I've seen and do support. It has a lot to offer in terms of demand management. That's ultimately what it's about.

I would not want to presume, but what is happening is that there are certain thresholds where the regulated price plan only clicks in at a certain kind of consumption level

or below. The others are on demand plans with the government for load shifting and going off grid or whatever the plan is. Most of your application, as I've seen, is kind of institutional, which has a profile of usage—schools, for instance, would have time of day, time of year. When you look at low profiling, there are penalties in fact if you use it off the regulated time of use. Have you seen any relationship between your equipment, tying it to—if you look at the IESO website, there's actually a graph that shows up about what they're buying it for. What is the market price of energy? It's actually about seven cents right now, around 7.2 cents a kilowatt hour. They're charging five, or 5.7. A real smart program would actually intervene between usage and price. Does your product have the ability to intervene on the market side of it or just give you profiles on—you're using 200 kilowatts at 8 and 300 at 9. Is that kind of what it does?

Mr. Williams: I would say, to date, because in many of the markets that we operate, prices have been set; prices are fixed.

Mr. O'Toole: Yes, over 250.

Mr. Williams: So the interest in being able to adapt to certain strategies to reduce consumption when prices hit certain levels hasn't come into play yet.

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Mr. O'Toole: The big discussion here on this whole thing, on metering on the residential side, is in the sub-unit, i.e. tenants. This is a very big question, the shifting of the cost of energy down to the unit, i.e. the apartment. Some would say they're the least able to afford to pay the price. Could your product solve that problem?

The Chair: I'll need to intervene, Mr. O'Toole. Thank you for your questions and comments. We'll now move to Mr. Hampton.

Mr. Hampton: Your product allows, whether it's the building owner or the building tenant, to essentially monitor their electricity usage.

Mr. Williams: That's correct.

Mr. Hampton: One of the points you raised in your brief is that the information you provide would be very helpful to schools to do energy retrofits. Once your metering equipment is installed in a school, it can tell the school board where they're wasting energy and where their maximum energy use is. It can tell them that on a seasonal basis, a daily basis and, I guess, a yearly basis. Is that correct?

Mr. Williams: That's correct.

Mr. Hampton: One of the things we've heard from school boards, though, is that what we really need is the money to do the retrofits. In other words, they've got a good sense of how they can save and how they can reduce electricity and natural gas consumption, but they say the problem is, "We don't have the money to do the retrofits."

You're doing some helpful work here, but where does that helpful work lead to if the money isn't available? I'm talking not just about the institutional side here like schools, but we've also heard it from people on the commercial side, who are saying, "Look, what we need are some financial incentives so we can actually do the

capital work and make the capital investment to make our building or our operation more energy-efficient. Until we see those financial mechanisms, we will have a lot of information, but we won't be able to do anything effectively about it." I wonder if you have any comments on that.

Mr. Williams: I think our experience has been that our systems, when they're used by people who operate buildings, are typically finding what you might call more the operational errors than they are pointing to retrofit opportunities. So essentially, when a building automation system doesn't perform the way it should, it doesn't always tell you it didn't work properly. The metering system, by contrast, essentially never misses anything. It always allows you to see exactly what's being consumed. From a practical perspective, when our systems are installed in buildings, we typically first find the waste. The waste will be the first issue to show up.

The Chair: Thank you, Mr. Williams. Before moving to the government side, I thought that members of the committee might be interested in knowing that Canada officially has a new Prime Minister. Please proceed, Mr. Leal.

Mr. Leal: It's certainly a pleasure to welcome Rick, Ross and Mark from Peterborough this morning. Carma Industries has an excellent reputation and is doing a lot of great work in this field, and I know my colleague Jennifer Mossop would like to ask you some detailed questions.

Ms. Mossop: I was interested in two areas. One was with regard to the schools, which I think is quite interesting because what we are trying to do, as we were talking about earlier, is create a culture of conservation. The previous presenter pointed out that what we have at the moment is a culture of waste. I'm wondering if the students can become involved in any way with these meters and what they're telling these kids.

Mr. Galonski: I'd like to handle that, if I could, and speak to some of the comments by the previous member. Yes, there is a cultural issue at the school level, and these types of devices will help us to educate or at least inform the head custodians and some of the other people acting in the building as leadership with regard to energy, as well as tenants, as was mentioned earlier.

In grades 5 and 10, I believe, there are environmental courses. What is proposed through devices like this is you get a real-time printout of consumption, and that will help in the classroom. That's part of the cultural change that we've talked about and you've mentioned, so that these kids are educated at an early age to conserve. I believe they are, and this will help.

I think school boards need both the money and these devices to make the changes, to create a culture in which we're cognizant of energy. I'm optimistic that we'll get there. It's just the timing of the price of these commodities and the action of conservation which I think we have to be concerned about.

Ms. Mossop: So there's a real opportunity there to help educate these kids and help them be the future and be a more responsible generation with our resources.

The other question I have is around your work with tenants, because we've had some tenants' groups here who have been very concerned about the use of sub-meters. The sense is that the landlords should be targeted, because they're the ones who have control over the big energy users and the changes they could make, like new windows or more efficient furnaces or insulation. How are you finding the relationship between landlords and tenants in your experience?

Mr. Galonski: Essentially, most tenants are generally getting bills, but they don't get the information to know what constitutes the consumption that cause those bills to be as high as they are. I think what you'll find is that as long as systems are put in place to allow tenants to see their consumption, their graphic profiles, then they'll know how to react to reduce their usage and therefore reduce their costs.

The Chair: I'll need to intervene there. Thank you, Messieurs Williams, Galonski and Pilkey of Carma Industries.

ASSOCIATION OF CONDOMINIUM MANAGERS OF ONTARIO

CANADIAN CONDOMINIUM INSTITUTE

The Chair: I'll now invite our final presenter for the morning, Mr. Andrew Roman, representing the Association of Condominium Managers of Ontario and the Canadian Condominium Institute. Mr. Roman, as you've likely seen, you have 20 minutes in which to make your presentation. The time remaining will be distributed amongst the parties afterward for questions and comments. Please begin now.

Mr. Andrew Roman: Thank you very much. I was hoping to have some other members of the client group with me, but they were unable to attend. I actually think they're stuck in traffic on the highway somewhere.

I've presented a brief which provides at the beginning an introduction to our clients and a background section, which indicates that our clients are generally in agreement with the objectives of the legislation we're discussing, because all consumers want lower electricity bills, and energy conservation, properly conducted, will do that.

We're focusing particularly on the smart metering part of it because that is the area that affects our clients most directly, but I didn't want to give the incorrect impression that what we were seeking was some kind of a general exemption from the legislation for all condominiums. That's not the case. What we have are certain specific problems, which I would really characterize as technical problems, and I'm here to discuss those, and then we will need to work out some method of providing an exemption to solve those particular technical problems only.

These problems arise because of the way condominiums are designed. The typical buildings have heating and air conditioning, which are the major sources of electricity consumption, provided centrally. What that means

is that the individual consumer in an individual unit does not have a very large opportunity to save electricity because there isn't all that much the individual consumer can do. For example, the fan that operates the heating system is something they can operate but it doesn't consume a lot of electricity. Although the refrigerator does consume a lot of electricity, they're not going to turn it off at peak times and let their food go bad.

Also, on the wiring side of it there's another problem, which is that many of the condo units have baseboard heaters, which are wired in a series across four or five different units. If you were going to smart-meter, you'd need a smart meter for the baseboard heaters and another smart meter for the rest of the electricity system in the unit, because they're separately wired. Where they're wired across four or five different units, it means that if you put one meter in, that one unit holder would get a bill for four or five other units, which would be unfair, and there would be no practical way they could get the money back from their neighbours, because they wouldn't know who had consumed what. The only way around that is to rewire the entire building so as to put each baseboard heater on a separate meter and, as well, you'd need two smart meters—one for each baseboard heater and one for the rest of the unit.

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When you put all this together, it gets pretty costly. If you're looking at a typical condominium bill of \$35 a month and then if you look at what Toronto Hydro will charge, typically \$13.64—I'm getting this from page 3 of the brief, in the middle. A new account holder would pay \$13.64 to Toronto Hydro for reading the new account and something like \$3 to \$4 to cover the smart meter cost, which is about \$17 a month. That means that the consumer would have to save half their electricity bill just to break even, and that's not very likely, given the kinds of things they can do to control their electricity bill. I don't think anyone is going to save half their bill; it's going to be very, very difficult.

So the general principle we would propose, which I think is not one that is antithetical to the legislation, is that one should not compel the introduction of smart meters unless it looks clear that the amount of energy savings will be equal to or greater than the cost of installing the meters. Otherwise, you would be compelling people by law to waste money, which is not in the public interest and which is not really defensible.

This tends to arise particularly with condos wired the way I've described them, which is by no means all of them. It also tends to arise in the smaller units, which are typically now being constructed—the 600- to 1,000-square-foot units. So, depending on which way the buildings are wired and set up, some buildings will have no trouble complying with the legislation; a lot of them will. It shouldn't be one-rule-fits-all. So what we will need is a specific exemption for a particular type of unit of a certain size where the costs would exceed the benefits. I don't have a drafting of that today. I think that's something we're going to have to arrive at in discussion with your officials and advisers because this is a

fairly complicated piece of legislative drafting that would be required. I'm here today to talk to you, really, about the principle.

In addition, I do mention at the bottom of our brief, our last part, that there are other methods of energy conservation that would work in these smaller and difficultly-wired units. We mention some examples of that, such as motion detectors that turn off or turn down the heat and turn off lights when people leave the room. These are the sorts of things that would be or could be feasible to install, and various other retrofits and heat pump systems.

Just to conclude, then, the smart metering initiative is one that will save the average detached homeowner money through energy conservation, but it doesn't provide the same benefits to those condo residents living in smaller spaces with shared services. That's why our clients are requesting that the standing committee recommend to the ministry that a specific exemption be made to Bill 21 for condominiums where conversion to smart metering would be wasteful. We'd like to work with your officials to arrive at that wording. We'd also like to work with your officials in developing new ways of conserving electricity that are cost-effective and feasible for the condominium community, and I've set out some examples of those on the last page of our brief.

That concludes my submission, and I'll leave myself open to questions.

The Chair: Thank you very much, Mr. Roman. You've left a generous amount of time. We'll start with the NDP; about four minutes each, possibly more.

Mr. Hampton: The issues you've raised were raised by a number of tenants last week, and they emphasized again what you've just told us: that in many cases tenants do not have any control over most of the items that use energy. Just so that I'm aware of this, the principal appliances—fridge, stove—to your knowledge, are they the responsibility of the tenant, are they the responsibility of the condominium unit owner or are they the responsibility of the building owner?

Mr. Roman: Normally they would not be the responsibility of the building owner, although, again, it may vary with the building. Some are sub-metered; some are centrally metered. Then it would depend on the age or vintage of the architecture. The more modern ones would generally have individual meters, and if the owner lives in the unit, then the owner is responsible; if a tenant lives in the unit, normally the tenant would be responsible.

Mr. Hampton: In any case, if we're thinking about appliances, like refrigerators and stoves, the way to really get at that is to first of all insist on energy-efficient appliances as a provincial standard and, secondly, provide some financial incentives for people to actually acquire the most-energy-efficient appliances. It seems to me that if we really want to get at this issue of how much electricity is being used that might be under the control or might not be under the control of the unit owner or the tenant, a big part of this is to move toward energy-efficient appliances and provide some incentive for that.

Mr. Roman: There's always a danger with energy-efficient appliances, the same as with low-flow shower heads or taps. If it takes me 30 seconds to fill a pot of water and I have a low-flow shower head and it takes me 60 seconds to fill a pot of water, I'll take the 60 seconds and it just inconveniences me because I still need to fill the pot. It's the same thing with a stove that may be energy efficient: If you're going to leave your turkey in the oven or something in the frying pan until it's cooked, if it cooks at half the heat, you're going to leave it there twice as long. So sometimes those appliances don't really work as effectively as the owners would have you believe.

One is not really a substitute for another. Smart metering gives consumers information, which gives them choice. I don't think anybody would suggest that it's desirable to deprive people of information or deprive people of choice. The only thing is that if the meter costs so much to install and so much to read and there's a reasonable payback period that you would regard as a threshold, if in small condominium units you don't reach that reasonable payback period, then you just don't do it. I don't think anybody would argue with that, in principle. It's just a question of finding the right spot at which to draw the line.

Mr. Hampton: So your final position is that in fact the government is not likely to achieve anything, from what you're seeing right now, in most condominiums? In other words—

Mr. Roman: No, I didn't say that. I just said that in those units where the structure or architecture of the condominium, the method of metering and the size of the units all play together to make them uneconomic, the government isn't likely to achieve anything if they force those places to take smart meters. But there will be other units that don't necessarily fit that category. I don't think we can generalize across all condominiums, and that's why our client is not asking for a blanket exemption for all condominiums.

Mr. Hampton: So what, then, is your final position?

Mr. Roman: Our final position is that where you do a benefit-cost analysis and it appears unlikely that the unit holders of a certain size or type of structure will ever achieve reasonable energy savings through smart metering, they should be exempted from it.

The Chair: Thank you, Mr. Hampton. We'll now move to the government side; about four minutes. Ms. Mossop.

Ms. Mossop: Thank you for your presentation. I would say that potentially we've already moved somewhere in the culture of conservation by the mere fact that you've put together—the condominium sector has bent their mind to this issue and obviously come up with some very serious and viable energy-saving options and recommendations. So we thank you very much for all that work and look forward to your continued effort in this area.

I think what we're talking about is the difference between the smart meter and the sub-meter, the sub-meter being the one that would go into each unit in a

building or condominium or apartment, as opposed to the smart meter, which would encompass the whole building.
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Mr. Roman: No. One could also put smart meters in individual units.

Ms. Mossop: Right. That's called sub-metering.

Mr. Roman: Sorry. All right. In a sub-metered building, one would use a different type of smart meter, probably, than one would for an industrial customer.

Ms. Mossop: So your concern is about the sub-metering. Is that right?

Mr. Roman: That's right.

Ms. Mossop: Okay. I just wanted to clarify that for the jargon's sake.

So your concern is around the sub-metering, and there's nothing in this legislation that says that sub-metering is going to be imposed. We have heard concerns about it from other tenants' organizations as well, the sense that what we need to do is be encouraging the landlords or the building owners to do those larger savings. Since the legislation doesn't really say we're going to sub-meter, is there something wording-wise that you indicated you could help us with?

Mr. Roman: Not today, because this is something we would have to discuss. We have not developed or arrived at any consensus on a particular wording. I think there's a general view, though, that the sub-metering efforts that have taken place in the past may not have been as fast or sub-metering as they should be, that it's going to be desirable in the newer buildings to put in sub-metered smart meters where it makes economic sense to do so. There is again a concern there, that if somebody is building a new bunch of condo units today, would they be obligated to give each unit in that building a smart meter, and if so, whether the cost of that would exceed the benefit.

Ms. Mossop: So I come back to, if we're going to talk about newer buildings, then I hope that this research that you've done and the concerns around energy conservation will be taken into consideration there. Probably the most alarming thing I heard you talk about was base-board heating, because that's one of the biggest energy-guzzlers around.

Mr. Roman: You're right.

Ms. Mossop: So there's a lot of work I think we can do in concert with you on a go-forward for buildings and moving on the culture of conservation. I think we'll take under advisement your concerns with regard to the sub-meters.

Mr. Roman: Thank you.

The Chair: Thank you, Ms. Mossop. There is time, Mr. Delaney.

Mr. Delaney: You had a number of very interesting comments regarding incremental costs. Particularly, and just to generalize it, you quoted Toronto Hydro rates with regard to smart metering and the \$3 to \$4 per unit. I assume that's \$3 to \$4 per unit per month.

Mr. Roman: Yes.

Mr. Delaney: Do you view those charges as immutable? With the development of technology, it seems

inevitable that a human being won't ever actually have to sit down and analyze a specific bill. What exactly does that \$3 to \$4 per unit go for? Do you know?

Mr. Roman: I had the benefit this weekend of being at an energy conference and talking to one of the people who is the largest manufacturers of smart meters, and importers of them. They also believe that it's going to be in the range of \$3 to \$4. That is the cost of installing, which is a wiring cost, and depending on how far away your unit is from the master control room of the floor, you may have to string wires through ceilings and fish and drill holes and fill holes, and that kind of thing.

Mr. Delaney: I have a smart meter at home. It took a minute and a half to install. The old one popped off, the new one went in and that was it.

Mr. Roman: Well—

The Chair: Thank you, Mr. Delaney. Thank you, Mr. Roman. We'll move to the Tory side.

Mr. O'Toole: Thank you very much. I do appreciate it. I've taken the time to read this and I think you make some excellent points. I really do. I want to commend you for your objectivity. However, often people like to just simply agree with the government so they don't get on the wrong side of the debate—excluded, in other words.

There's a point you make here at the bottom of page 1: "CCI and ACMO believe that conservation measures should only be imposed to the extent that the value of the electricity saved through conservation, properly calculated (that is, unsubsidized) exceeds the cost of achieving those savings. Otherwise, the policy would be one of coercing consumers to increase their out-of-pocket expenses without contributing to the goal of energy conservation. That would not be a desirable policy, as it would extract money out of the economy for no useful purpose."

I think you've made that point very well. In fact, I've sort of simplified it down. The government does have a plan. The plan is, they're going to save the consumer, the residential side. They're going to install the smart meter, a clever little device, to tell you when you're using electricity, as if they don't know when they turn the dryer on or have the bar fridge running needlessly. The consumer's going to complain, "But the price is going up." In fact, if you're reading the Ontario Energy Board, they're going to look at the regulated price plan probably in March and April, they're going to realize there's about a \$350-million deficit that's going to be shoved onto the electricity you've already used, because you've underpaid for it, and they're going to say to the consumer, "Well, why don't you use the tools we've given you, the smart meter? Why aren't you going to use the smart meter to conserve?" The point you're making is, it doesn't conserve energy. At least, I've not seen anything except the OPA report, which suggests there may be 500 megawatts saved across Ontario, mostly by demand-response programs on the large side, not on the residential side.

I completely concur with you. You've made an extremely informed argument. I think it's right on. Condos

are a whole other deal. It's clear from the questions raised that they don't get it. They already have cable television, and all those utilities are already monitored in condos and sub-billed for the fees, whether you've got cable or the movie channel. That's how condos are run. Now they're going to have to pull another wire, or at least some device. Who's paying for all of that? From what you've said here, it's not just \$3 to \$4 for the installation; it's about \$13. When you look at your electricity bill today, the greatest majority of it is all this line loss and all these other obscure calculations—debt servicing and all the rest of it. The energy is the smallest part of it all.

Mr. Roman: The energy is about half.

Mr. O'Toole: It's a little less than half, and I look at mine fairly regularly.

Mr. Roman: Yes, that's true. I agree with your point that meters per se don't save money; it's people that save money.

Mr. O'Toole: They don't save five cents. They'll cost you more.

Mr. Roman: But just a second: The meters give you the information to make the choice to save the money.

Mr. O'Toole: They could send you a letter and tell you how to do it. They don't need to install some \$8,000 of sophisticated equipment.

Ms. Mossop: We'll send you a letter.

Mr. O'Toole: Good luck to you.

To me, it's one of the better submissions I've seen. The implication here for the consumer is, "At the end of the day, why don't you use the smart meter to save?" The smart meter doesn't save. All it's going to do is say, "Do your clothes at 2 in the morning, as opposed to 4 in the afternoon." That's what it's telling you. It manages the profile of the load.

Mr. Roman: There's also another factor. I'm advised that in condominium corporations, you may need to change the declaration and—

Mr. O'Toole: The act itself.

Mr. Roman: No, not the act. You will have to change the declaration of the building, because the way it's set up now is one type of metering, and then if you're going to change it and send people individual bills, you'll do others. It does cost something to purchase and install a meter, and it depends on the type of structure in which you have it. But in most places, it should pay. It's only in the very, very small places where there isn't a lot of sub-metering that it doesn't pay.

The Chair: Thank you, Mr. O'Toole. Thank you, Mr. Roman, on behalf of the Association of Condominium Managers.

Unless there's any further business of the committee, I advise us that we are recessed till 1 p.m.

The committee recessed from 1149 to 1303.

CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1

The Chair: Ladies and gentlemen, I call the committee back into session. We'll be inviting our first

presenter, Mr. Bruno Silano of CUPE Local 1, Toronto Hydro. Mr. Silano, just to inform you of the protocol, you have 20 minutes in which to make your presentation, and time remaining will be distributed evenly amongst the parties. If you have a written submission, I'll have the clerk distribute on your behalf. I would invite you to be seated, and please begin.

Mr. Bruno Silano: I have another member of my local with me to present also.

The Chair: Please begin; your time is running.

Mr. Silano: Thank you. On behalf of the over 1,200 CUPE Local 1 members representing workers at Toronto Hydro, we thank you for the opportunity to present our views on Bill 21, the electricity conservation act, 2005. My name is Bruno Silano and I'm the president of the local.

Toronto Hydro is Canada's largest municipal utility, with over 670,000 customers and approximately 700,000 meters. It is the second-largest local utility in North America, second only to the Los Angeles department of Water and Power.

The women and men of CUPE Local 1 are involved in every facet of the distribution of electricity for the city of Toronto. Our members include those employed in the skilled trades, such as meter mechanics, to members in the customer care area, which includes the call centre, billing, collections and remittance. With me today is Terry Weatherhead, a meter mechanic.

The members of Local 1 are proud of the role we have played in fighting for public power and energy conservation in Ontario and across Canada. Our local has been active in all aspects of provincial electricity policy for decades. We all realize that Ontario's electricity policy is one of the most critical issues that this government will tackle. The policy established in this bill will have a huge impact on the standard of living of all Ontarians and on the whole provincial economy and will be a legacy for future generations. The people of Ontario and the government of Ontario need to make and implement some big decisions to ensure that we have an adequate, reliable and economical supply of electricity now and into the future.

As you may be aware, this year, 2006, marks the 100th anniversary of public power in Ontario. The province is at a critical juncture right now and we must make the right decisions today or else the future is very dark—no pun intended. This is why we feel Bill 21 is so important. To this end, our union, via our smart meter committee, has been monitoring the Liberal government's movements involving its conservation and smart meter initiative dating back to 2004. The government's decisions will impact almost 200 members of our local.

CUPE Local 1 believes that the best way to meet energy conservation targets is through publicly owned local distribution companies or LDCs. At Local 1, we support the idea of investing first in conservation and energy efficiency before building new generating capacity. This is the fastest, most economical and environmentally sustainable means of reaching the goal of having an adequate supply of electricity. Publicly owned

and operated utilities are in the best position to manage demand through conservation and energy efficiency programs and balance these with expansion of capacity.

There is much this government can do to reach our shared goal of an adequate, reliable, safe and affordable supply of electricity. We need to, first, address supply issues, first through investment in conservation and energy efficiency measures; and, second, focus on local conservation and demand measures to alleviate pressures on transmission and distribution systems. This route is preferred environmentally in reducing demand as opposed to enhancing supply.

We want to make a few more detailed comments on some aspects of Bill 21, the Energy Conservation Responsibility Act, and propose some alternatives that we believe will better achieve the goals of an adequate, reliable, safe and affordable supply of electricity. But first a few comments.

We were pleased to see that the Electricity Restructuring Act, 2004, included a key role for LDCs in conservation and energy efficiency programs. Unfortunately, there are aspects of Bill 21 that appear to take those measures away from local utilities and place them back in the hands of the provincial government. As such, Local 1 believes that this bill can be improved.

While we appreciate that it is essentially an enabling piece of legislation which allows for the creation of the smart metering entity, we suggest that it is a better strategy to make sure that the bill is not overly broad, with the result that it simply sows confusion.

The establishment of the smart metering entity will surely result in a new bureaucracy. The limitation on the powers of the entity ought to be carefully crafted to ensure that this bureaucracy doesn't simply replicate the functions that are already being performed by more established and experienced corporations like Toronto Hydro.

Our members are very much aware of the conservation demand management initiative at Toronto Hydro and would like to be more engaged in this program and all aspects of energy conservation. There is no need to duplicate or replace these services in the new entity. The result of duplication and replacement will be more money spent on bureaucracy and rediscovering what is already known. There is no benefit to citizens or rate-payers or to the goal of energy conservation.

We have two main areas in the bill for improvement. Since the bill does not describe what the smart metering entity will actually do, but only empowers it to do almost anything conceivable, we are somewhat hampered in giving careful and useful criticism except to suggest that what the entity will do should be decided before the legislation is passed. However, there are two specific areas which we suggest ought to be improved before the bill becomes law. With that, I'll hand it over to Terry Weatherhead.

1310

Ms. Terry Weatherhead: Installation of smart meters: Section 53.8, paragraphs 1 and 7, do not appear sufficiently clear to us to determine whether the intention

is that the entity will actually own and/or install the smart meters.

Since Local 1 members like myself install, maintain and verify some 700,000 meters at Toronto Hydro, we have the skill and ability to do so in an efficient and competitive manner, and we do not see the need to enable the entity to duplicate this work. There is no basis to believe that the entity would suddenly do any better than what our members have been doing for Toronto Hydro for decades. There is no economic or other argument that would justify a centralized meter installer in Ontario. While the smart meters are advanced meters, their installation is no different than any other meter that I, myself, currently install and have been installing for over 20 years. The entity will have enough to do to encourage conservation; it ought not to be given the task of installing smart meters when there already exists in Ontario the skills and installation infrastructure to perform this work.

We recommend that the bill be amended to make it clear that the smart meter entity will not be empowered to own or install smart meters where existing electrical distribution corporations have the ability to perform installations.

Smart meter data collection and transfer: Paragraphs 2 and 5 are another example of unclear drafting. While it is clear that the entity will require data and will transfer such data, the bill seems to indicate again that the entity will be starting from scratch with respect to data that are already being routinely and properly collected and processed by our members at Toronto Hydro. There is simply no need to duplicate this work, which is essentially the gathering of billing and related data. If the entity needs more data for the purposes of conservation than is currently collected, all it has to do is ask for the data from the sources that are already collecting and processing the information. In some sense, this is already done. I do it myself all the time and have been for 20 years.

The bill should be amended to make it clear that, where local electrical distribution corporations collect and transfer data that are required by the entity, the local electrical distribution corporations shall continue to collect and transfer those data on behalf of the entity.

Similarly, we suggest that the government ought to be careful not to empower huge and unnecessary expenditures. Section 53.8, paragraph 5, seems to authorize the building of an entire telecom system for the entity where more than enough capacity currently exists in the Ontario telecom networks for the transfer of immense amounts of data. The Toronto Hydro telecom network, on its own, could supply the entity with the necessary capacity. The provision is simply too broad and will lead to duplication, and invites waste.

We suggest that this provision be amended to ensure that the entity does not start a new telecom empire, but simply uses the existing capacity.

Mr. Silano: Conclusions and recommendations: The members of Local 1 are proud of their efforts to protect and expand public power and promote conservation.

The ultimate effect of Bill 21 must be to ensure that Ontario has an adequate, reliable, safe and affordable supply of electricity via conservation measures. Otherwise, the province of Ontario will be left in the lurch. That is why the continued utilization of LDCs and their highly skilled and trained staff is the best route for the government to take to achieve its objectives. Given the enormous costs involved and the even greater risks associated with a failed conservation and smart meter program, it would be reckless for the province to proceed otherwise.

The Chair: Thank you, Mr. Silano and Ms. Weatherhead. We will now proceed to the government side, about three minutes each.

Mr. Delaney: I have a number of questions that I think I can ask fairly quickly. Let's see if we can do it. What type of bureaucracy are you concerned that smart meters will engender?

Mr. Silano: We're very concerned that the entity will essentially duplicate what LDCs are already, and traditionally have been, doing for almost 90 years in the province.

Mr. Delaney: Which—just to clarify for me—is?

Mr. Silano: The duplication of services we already provide at the distribution level. So if it's in the collection of smart meter data or in the installation of data, that's all a bureaucracy that would have to be created within the entity.

Mr. Delaney: Okay. What functions that your members now perform might change as smart meters are implemented?

Mr. Silano: I think Terry might be in the best position to answer that.

Ms. Weatherhead: I'm not really sure—you're assuming that we're going to be installing the meters, right?

Mr. Delaney: Regardless of who installs them or how, making the assumption that a large base of smart meters is installed, what functions that your members now perform would change if such a large base of smart meters were installed?

Ms. Weatherhead: In a sense, probably nothing, except that instead of installing other meters, we're going to be installing smart meters. We install meters every single day. I also want to remind you that that's a very specific trade. It took me five years to get that licence. To find that kind of expertise, in a broad manner like we have at Toronto Hydro and at all the other LDCs, is not just going to be difficult; it would be almost impossible. So my job won't change, except that instead of installing other meters, I'll be installing smart meters and using that kind of knowledge to install those meters.

Mr. Delaney: How are your members in Toronto Hydro working to implement new technology that would improve, for example, the collection of data that would be key for residents and businesses to make energy conservation decisions?

Mr. Silano: I know that currently at Toronto Hydro there are several pilot projects under way with different

technologies from some of the manufacturers. They're testing which technology would work best, depending on the urban environment that they're in. I know that Toronto Hydro does use the data right now to be able to describe to any customer—small residential, small business or large institutional or commercial—to be able to show them what their load characteristics look like and to offer advice as to how to reduce their electricity bill. So that information is very important for the local utility. Without it, they're really just poking around in the dark.

The Chair: We'll move to the Tory side.

Mr. O'Toole: I have three or four comments. I'm kind of surprised you're not here commenting on Bill 206 and the fact that there could be a province-wide walkout on the 10th, which is sometime this week. But you're not.

Mr. Silano: It's a separate bill.

Mr. O'Toole: It's a separate bill, but I participate in both of them and find they both somewhat derail from time to time.

I fully applaud the goals of adequate, safe, reliable and affordable power, but I'm finding it difficult to find how they're going to achieve any of those. If you read the IESO report or the OPA report, "adequate" is questionable, "reliable" is questionable—given last summer; you're familiar with that?

Mr. Silano: Yes.

Mr. O'Toole: "Affordable" is certainly—there's going to be about a 25% to 35% increase just based on the OEB's reports. Looking at the deficit under the regulated rate plan—you're familiar with those numbers—\$350 million is going to roll back into the bill for energy we've already used, plus they're going to up it to about 7.2 cents, from everything I've read, which is a fairly significant increase; 30% might be modest. I'm not sure how they're going to achieve any of the goals whatsoever. This thing here is going to add additional money and administrative oblivion to an industry that you've said is already prepared—I agree with the implementation. The interface with the consumer should be the LDC.

In fact, I've cited this report—you probably read *The Distributor*: a good, informative, layman's type of publication that most of us can understand. They have the same concerns. I won't read all of it, but for the record, it's important: "A common concern that has been raised by LDCs in their review of the specifications is the need for a fuller explanation of how the overall smart meter system will work." It goes on to talk about functionality specifics, but more important is the communication system, which you've mentioned, as well as the meter data depository. So this is going to be another big, centralized "government knows best" plan. All the data goes there, and they do the billing and all the customer-interface stuff. I think it's doomed to failure unless they address many of the suggestions you've made.

I have one other comment that I'd like to make. You know that the most recent report by the IESO said clearly, on page 3, that the outlook "reinforces the need identified in the 10-year outlook to have the coal" plants

“available for a period of time beyond” the time announced for the shutdowns. In other words, they can’t fulfill that promise. They have no plan. You don’t know, and you work with it every day, whether your licence is going to be—I just see this lack of planning. They just don’t have a plan.

One other thing too: What’s your position on the new gas-fired generation in Toronto? There are really a lot of questions there, because this whole bill is a framework for failure. What I’m trying to point out—

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The Chair: I need to intervene there, Mr. O’Toole. We’ll proceed to the NDP—

Mr. O’Toole: I wish there was more time. Unanimous consent for more time.

The Chair: Mr. Hampton, please.

Mr. Hampton: I actually do have a question. The government has been talking about smart meters. We’re now into the third year that they’ve been talking about smart meters, yet this bill, as you’ve described here, is extremely vague. It’s still not clear exactly what form this form of metering will take. It’s still not clear—as you point out, will this be centralized, decentralized, partly centralized, partly decentralized? How long do you think this is going to take, given that they’ve talked about it for three years yet have produced a very vague piece of legislation? How long do you think this is going to take, in your experience, to actually do this?

Mr. Silano: I’m going to hand that one over to Terry.

Ms. Weatherhead: I don’t have an answer for you for that. They give us deadlines, but they keep pushing forward the date on which we can start. They give us different messages as to what kind of meters. As Bruno said, I myself have installed a number of smart meters on a pilot project. We’re testing how well they communicate in our worst areas, that kind of thing. As far as the installation, the numbers they’ve given us that would keep us on track we’ve been able to do, but until we get some really clear groundwork and we’re really clear about which meters and who’s going to do this, it’ll be hard to really start.

Mr. Hampton: Have you seen any cost-benefit analyses? We’re being told that this is probably a \$2-billion project. When you start talking about installing these across the province, you’re probably looking at \$2 billion—possibly \$2 billion plus. In your work at Toronto Hydro, have you seen any cost-benefit analyses; in other words, what smart meters are supposed to do, any targets, anything that says, “This is how much peak demand will be reduced,” or, “This is how much overall demand will be reduced”? Have you seen anything like that?

Mr. Silano: No. In fact, that’s the biggest question mark around the whole issue of smart meters as a conservation tool. We have to understand that in an area like Toronto Hydro, 80% of the load is large commercial and industrial; 20% is residential. The trick is going to be to entice the large commercial and industrial folks to shift their usage, and many of them, from what we’ve been told, simply can’t do it.

If you run the TD tower in downtown Toronto or any of the bank towers, their core business hours are 8 a.m., say, till 6 p.m. As I understand the way the rates are being proposed, from 2 p.m. to 10 p.m. is going to be the peak period. Those folks are just not going to let all their staff go home and expect them to come back at 10 o’clock at night. So the amount of peak that may be shifted or moved around on that 24-hour scale is going to be questionable at best, and we’ve seen no hard evidence of where smart meters will actually do that. In fact, any of the studies and reports we’ve seen are that, in aggregate, one’s electricity bill will increase. That, more than anything, will be the carrot for ratepayers to try to shift load, but even that is still very limited in terms of what a homeowner can try to move to after 10 p.m. or wait till the weekend.

The Chair: Thank you very much, Mr. Silano and Ms. Weatherhead.

FEDERATION OF RENTAL HOUSING PROVIDERS OF ONTARIO

The Chair: I would now invite our next presenters, Ms. Venneri, Mr. Butt and Mr. Lithgow of the Federation of Rental Housing Providers of Ontario. I would just advise you, in terms of protocol, you’ve 20 minutes in which to make your presentation. The time remaining will be distributed, as you’ve just seen, for questions and comments amongst the various parties. Please begin.

Ms. Andrea Venneri: I’d like to thank the committee members for allowing us this opportunity to speak to this important legislation, Bill 21. Allow me to introduce myself and my colleagues who’ve joined me today. My name is Andrea Venneri. I’m the director of policy with the Federation of Rental Housing Providers of Ontario. We are the industry association representing multi-residential property owners and managers across Ontario. Joining me today are Mike Lithgow, energy manager with Greenwin Property Management, and Mr. Brad Butt, who’s the president and CEO of the Greater Toronto Apartment Association.

We’re here today to provide the Ontario government with important information that we believe will assist them in successfully implementing the smart metering initiative across the province. Allow me first to frame our discussion by giving you a quick overview of the rental market. I will then speak to some of the data we’ve provided you with in our written submission, both on current consumption patterns and on the impact on consumption decreases through smart metering. Finally, I will address three of the larger challenges we, as an industry, believe the province faces in implementing this policy, as well as some of our recommendations and solutions.

The multi-residential rental industry represents approximately 21% of Ontario households. Our estimates indicate that approximately 90% of those dwellings are bulk-metered: One meter exists inside the building, the landlord pays the electricity costs, and the associated

costs are apportioned by unit type or perhaps by square footage and included in a resident's rent. Clearly, the result of this is a disconnect. Tenants are making energy consumption choices but not having to bear the true financial consequences of doing so. Given the current framework, there's undeniably great potential for energy savings, both in overall consumption and at peak demand times in Ontario.

According to the data we have from comparable jurisdictions and a few sub-metering examples here in Ontario, there have been very strong results in decreased energy consumption when tenants are individually billed for their choices. In non-electrically heated units, which represent the vast majority of dwellings in the province, average in-suite consumption ranges anywhere from 350 to 700 kilowatt hours per month. Therefore, approximately 3.9 billion kilowatt hours in electricity consumption is annually bulk-metered.

Clearly, the size of the market and the potential for saving is tremendous, but what kind of results should we be expecting with smart metering? As we outlined in our written submission, the data indicate that if the province can successfully implement this policy and address the barriers I will speak to in a moment, we believe that building consumption decreases will range from 20% to 30%. This represents an overall provincial consumption decrease of 1% to 2%. We believe that this is a very conservative estimate. One of the buildings we refer you to in our written submission allows for a cross-comparison of unit type within the same building, where some tenants had been individually billed and some had not. The percentage change in consumption ranges from 38% to 51% in that example. Evidently, the effect of paying for your personal consumption is exactly what you hope it would be. Beyond the clear conservation benefits this policy produces, the effect of sub-metering also has the benefit of decreasing demand at peak times.

I think we're all aware of the electricity challenges we're facing in the province, particularly in the summer-time and particularly in downtown Toronto. This initiative can also assist the government in meeting its electricity infrastructure challenges, in particular the pressures on the grid here in Toronto, where there is a very high density of rental apartments.

While many tenant representatives question how a tenant can truly decrease their energy consumption if they cannot control the types of appliances that they have in their suites, the results speak for themselves. There is great potential within this industry to change residents' behaviour, to the benefit of all Ontarians. We're also aware that many opponents to this policy claim that once tenants are made responsible for their electricity costs, landlords will then have no incentive to invest in their buildings through energy-efficient appliances or windows. This is a difficult claim for us to accept. One of the many benefits of today's rental market is increased choice. Vacancy rates are high, particularly at the low end of the market, which promotes a very competitive market for landlords to both attract and keep tenants in

their units. Landlords are now in a position where they must do what they can to distinguish themselves and their buildings from one another. This manifests itself in a number of ways: for example, a free month's rent, renovated buildings, appliance upgrades. The list goes on. We would argue that, should the province mandate this policy Ontario-wide, there would be an even greater incentive for landlords to invest in energy-efficient buildings, as it will be a very important element on which they will compete for tenants who are aware that they are responsible for their electricity costs.

1330

We also understand that further concern has been raised by opponents with respect to tenants facing increased monthly costs with sub-metering. In fact, according to our data, costs increase for those tenants who make the choice not to conserve or to consume at peak demand time—precisely the effect this policy is intended to have. But in the end this is not an income issue; this is a fairness issue. From our experience, we see that the evidence confirms that a very small portion of tenants are consuming a large portion of a building's energy. In other words, it's the low electricity users who are subsidizing the high electricity users. Given the way costs are currently incorporated in rents, many tenants are paying more in monthly expenses than they otherwise should be. That's why, with sub-metering, we conjecture that anywhere from 60% to 70% of tenants will be in a cost-saving or cost-neutral position, even with any administrative fees for the meters. It's the high users, those currently subsidized by their fellow tenants, who will see an increase in their monthly costs, but it is precisely those households that are the largest target of this policy. Low-energy users should no longer be punished with higher monthly expenses to pay for the choices of others. In the end, we're confident that the results speak for themselves and we applaud the Ontario government for this very bold initiative.

However, we're also aware that there are barriers to moving this policy forward successfully. The first is the need for a clear and fair formula to determine the rent reduction once electricity costs are no longer included in the rent. In order to avoid a deluge of tribunal challenges which could significantly delay implementation, this formula should be based on each unit's pro-rated share of the building's previous years' electricity costs. We believe this is the fairest way to determine rent decreases, as it is the method and the amount that reflects how electricity costs are currently incorporated.

However, from our perspective, we believe the largest obstacles facing our industry are legislative barriers now within the Tenant Protection Act. Currently, there are two provisions within the act that prove to be challenging this initiative. With sub-metering, electricity costs are removed from the rent through what is called a decrease in service. Tenants are then directly responsible for paying their electricity costs through individual billing based on their monthly consumption. However, section 134 of the act says that this should take place "if the landlord

and the tenant agree.” Therefore, mandating this initiative will be extremely difficult if the provision requiring tenant agreement is not amended. A legislative change permitting an exception to this specific requirement of this decreased service would greatly facilitate implementation.

The second legislative barrier is found in sections 145 through 153 of the act, which refer to the provision of vital services. Many of our members are concerned that, once the rent reduction has taken place and the electricity service is provided independently, they may still be held responsible for continuing to provide this vital service even if the tenant does not pay their bills. You can see how a tenant aware of this provision could perhaps use this loophole to their advantage, thereby defeating the very incentive this policy is intended to provide.

In the end, we believe this initiative can be a very positive step for all Ontarians; that is, with the necessary legislative changes to ensure fairness and equity for all involved. While we understand that changes to the TPA are challenging, we firmly believe that changes to these provisions are absolutely necessary to help ensure all Ontarians are given the same opportunity to benefit from energy conservation.

The province has set very aggressive goals with respect to smart meters in Ontario homes and businesses, and FRHPO believes that by including the multi-residential housing industry in the classes of properties subject to this legislation, this initiative can be a success and a benefit to landlords, tenants and all Ontarians. We look forward to developing its successful implementation with the government, with clear solutions to the specific barriers we face in this sector.

Thank you very much for this opportunity. I’ll ask if perhaps my colleagues want to make any comments.

The Chair: Thank you, Ms. Venneri. We’ll now start with the Tory side—about three minutes each.

Mr. O’Toole: Thank you very much for your presentation. You bring up a couple of very interesting observations. I just put to you a bit of a dilemma here. If you look back to the previous presenter, they would not support your observation, given the 80-20 usage profile. You say 21% of the renters in the province are going to be stuck with a fair amount of the problem, because its intended use is really that residential side of the business. There are demand management plans on the other side, the large industrial and commercial side.

There is a real, inherent conflict for the LDCs themselves. The problem is if, instead of load-shifting they do conservation, they actually lose revenue. Do you understand? There’s no formula here for them for the lost revenue in the event that they do save 20%. Their revenue will go down 20%, but their costs are going to go up certainly, during this transitional time frame. So there’s a very important administrative implementation issue to make this work.

I also say that I agree fully with the fairness issue, the formula issue. The issue then becomes that, like the Condominium Act, it’s troubled the same way under the

Tenant Protection Act. There are agreements of law in those legislative pieces that require informed consent. They’re really called disclosure pieces, technically. This bill will have to amend those two bills to allow those new arrangements of fairness to come about.

I would also want to ask you a question: What would be your best suggestion in terms of facilitating affordability and reliability in Toronto? For renters, for the most part, it’s already an economic challenge each month to meet those obligations. Should it help with the retrofit of buildings first, and re-examine the infrastructure where it’s important—people with baseboard heaters and that? You can’t simply isolate one unit, because there’s a panel. Do you understand? If you’ve got some advice on that, that would be helpful. How do you phase it in? Is there any way of bringing this about?

I’ll tell you, for instance, that you can look at the whole profile of usage. Right now, the local distribution company actually buys the power, and they take the heat for the line loss and pass it on to the customer. You’re going to be another interface, like a small LDC. In an apartment with 100 units, you’re going to have a central panel and you’re going to feed the power, but you’re going to charge an administrative kind of thing here for rewiring all the units and having little meters.

This plan hasn’t got any kind of what I’d call a skeleton. Do you understand? There’s a lot missing here. I applaud the idea of conservation, even load-shifting, and as it applies to you, you commend it as well. But how do we get there? What would you recommend they do? The first and easiest thing to do is put the new windows in and stuff.

The Chair: Very briefly, please.

Mr. Michael Lithgow: The way to keep capital costs down is to allow competition between the LDC installing, or private electric sub-metering companies or the landlord himself. The way to keep administrative costs down—the local LDC basically sets a maximum anyway. If Toronto Hydro is charging \$14 a month, the landlord is never going to get away with charging more than that.

The Chair: We’ll now move to Mr. Hampton—again, about three minutes or so.

Mr. Hampton: Do you have statistics on energy consumption for apartment buildings? In other words, where is most of the energy consumed? Is it mostly consumed for heat? Is it mostly consumed for appliances? What do your stats show?

Mr. Lithgow: About 65% of the power is used in-suite. Most of our buildings are not electric-heated, so it’ll be just appliances, lights and things like that. So you’re looking at some fraction of that, 65% of the total bill will be in-suite. The majority of it will be for appliances.

Mr. Hampton: So not heating, but air conditioning?

Mr. Lithgow: Yes, where there is air conditioning. That’s not in every unit in every building.

Mr. Hampton: Do you have a sense, in terms of air-conditioned units, of what amount of that power would be for air conditioning?

Ms. Venneri: I would imagine that would be difficult, because in some buildings the tenants choose to have an air conditioner, and the landlord may not be aware of that. So there's an issue about appliances. We don't necessarily know as a landlord what appliances are in a unit. We know what we provide our tenants with, but in addition to that, there could be space heaters, microwaves, stereos, computers, TVs and other appliances. I think air conditioning would fall into that category.

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Mr. Hampton: I think one of the biggest concerns, particularly, let's say, in southern Ontario, the greater Toronto area, is that summertime peaks are being driven by air conditioning. Tenants have to install air conditioners, in some cases, just to survive. You can sweat in the dark for only so long; after that, it's just not a sustainable strategy. But in terms of buildings, it's often the building owner that controls whether or not the building is, shall we say, energy efficient in the sense of being insulated well enough to keep the cold out in the winter and being insulated well enough to keep the heat out in the summer. So how do you address that? If the owner of the apartment building in effect controls the relative energy efficiency of the building, whether the windows are energy efficient, whether there's insulation etc., it seems to me that just forcing the cost of air conditioning onto the tenant isn't fair either.

Ms. Venneri: I think I spoke to that a little bit in my presentation in the sense that landlords are investing in their buildings, and I believe they will continue to do so, particularly if this is mandated. There will be a great incentive for them to provide their tenants with energy-efficient appliances.

One of the wonderful benefits of having this competitive market is that it has allowed landlords, after many, many years of not having the ability to invest in their buildings—since 1997, they have had that ability, because they can make the capital investments. So I would say that most of the buildings are in the process and have been invested in and will continue to be this way in this market in Ontario. To say that a tenant should not take on the cost—well, they need to be able to make educated choices, and that's what I believe this initiative is going to allow them to do.

The Chair: We'll now move to the government side.

Mr. Leal: Ms. Venneri, thank you for the laudatory comments on Bill 21. It's interesting to hear your take on Bill 21.

This morning we received a presentation from Carma Industries Inc., which is a meter maker in the great city of Peterborough, Ontario. Have you looked at their pilot project? They had a pilot project in Markham, Ontario—seven properties—to look at smart meters and the advantages of having smart meters and, indeed, individual apartment sub-metering. Have you looked at their data at all?

Ms. Venneri: No, I've not seen their data; I would love to.

Mr. Leal: In their data, they identify cost savings of between \$1.10 and \$7.90 per square foot, depending on

the apartment size and the range of activities that go on within that apartment. I just thought maybe your research may have been able to look into that, because I think it does provide some promise. We've heard some interesting observations, particularly on Friday, from a group from Waterloo concerned about tenants.

My colleague Jennifer Mossop had a question.

Ms. Mossop: There has been some suggestion in these hearings about potentially mandatory minimum standards for buildings in terms of energy efficiency. What recommendations would you have to encourage building owners to become more energy efficient, not just to save on their bottom line but to take part in what we are calling a culture of conservation? We'd like to get away from the culture of waste, as one of our presenters this morning referred to it.

Ms. Venneri: I think that's a very easy question to answer. I think there are two things the government can do: one is to provide certainty in our market. The looming cloud of what we think are very destructive rent controls and the uncertainty surrounding that is having a very bad influence on our market. Investors are sometimes hesitant to make the investments. They have been moving forward since 1997, since vacancy decontrol, but with the Liberal commitment to bring back real rent controls, there is some uncertainty in the market. So if we could have that certainty that we can make these capital investments and that it's a safe, competitive place here in Ontario, I truly believe that landlords will make these investments. In addition to which I would suggest that mandating this policy province-wide and addressing the legislative barriers that we brought forth today would help us because that would create the incentive for landlords to make these investments. I think that allowing this competition amongst the landlords is the most efficient way that that can take place.

The Chair: I'd like to thank the deputation from the rental housing providers: Ms. Venneri, Mr. Butt and Mr. Lithgow.

INTELLIMETER CANADA INC.

The Chair: I would now invite our next presenter to the front, Mr. Beacom of Intellimeter Canada. Mr. Beacom, please be seated. As you've seen, you have 20 minutes in which to make your presentation, time remaining to be distributed for questions and comments. I invite you to begin now.

Mr. Warren Beacom: Thank you very much. I would like to begin this afternoon by thanking the committee for allowing me to appear. My name is Warren Beacom, and I am a business owner in Pickering, Ontario, providing sub-metering systems and electronic meters for the last 15 years.

My company has been in business for 15 years, and we employ more than 30 people in Pickering. Our company puts more than \$3 million a year into the Ontario economy. I am here as a smart metering expert, and I would like to share information with you about the smart

metering business and about the impact that Bill 21 could have on the economy of Ontario.

The metering business works like this: Meters can be developed anywhere. Our main competitors on the development side are in the United States, Korea and China. Once a meter has been prototyped, it has to receive approval from Measurement Canada before it can be used in revenue billing anywhere in the country. This is to ensure not only that the meter is accurate, but also that it meets the safety and operational standards that one would expect here in Canada. This Measurement Canada approval process is neither simple nor easy but one that I personally have gone through on 10 separate occasions over the past 15 years, at large expense, to develop Ontario-developed smart meters.

Once a meter design has been approved for revenue billing, Measurement Canada requires that every individual meter is tested and sealed before it is put in the field. Meter testing and sealing facilities also have to be accredited by Measurement Canada. Traditionally, accreditation was reserved for large corporations and public utilities. My company, Intellimeter Canada, achieved this designation in 2002, and we have put into place 12,000 smart meters since that time. This was achieved at tremendous time and expense. I would hope that the Ontario government will make it mandatory that the sealing of all meters takes place here in Ontario. This will provide a level of quality for Ontario consumers and a source of employment for Ontario workers.

The other thing about the metering business that you should all understand is that metering systems are often married with billing services. Once a building has been retrofitted with smart meter systems and information is being collected and the data is being sent to a computer, someone has to finish the circle by sending the new customer a monthly utility bill, manage payments and provide a variety of customer services.

To address this need for our metering customers, Intellimeter Canada started a billing service a few years ago. Our service provides customer service from a live person in Pickering, Ontario. For this service, we charge a small monthly fee—a fee that is fair and reasonable and lower than the industry.

Unfortunately, not all companies are interested in doing the right thing for customers, and this has created what we consider an explosive situation, with the OEB regulations being abused and ignored. The latest fad in the industry is the free meter system. These are not all that different from the free cellphone package or any other number of free or no-money-down deals that are out there today, with the one important difference being that the person making the deal is not the person who pays the bill.

A large, multinational company will come in and install a free meter system on the condition that the developer or property manager sign a long-term billing service contract requiring tenants to pay exorbitant service fees for a long period of time. As an incentive to seal the deal, the developer or property manager is paid a signing bonus which gives the metering company owner-

ship of the wiring infrastructure in the building. The metering company then charges each resident in the building a penalty fee for buying power. The contract imposed upon residents offers no service guarantees, can be farmed out to call centres in other countries and is generally for the term of 25 years. These contracts benefit property owners and developers as they download the cost of the system onto residents who have no input into the process and who are left to pay the inflated prices year after year.

The Ontario government needs to be aware of these situations and must take steps to prevent them from happening. These companies not only can steal business from smaller, Ontario-based companies like mine, but they can also put citizens, especially those who can least afford to pay, in the position of feathering the nests of large corporations that give nothing back to the province.

1350

The Ontario government, in its efforts to have 800,000 smart meters installed in homes across the province by the end of next year, must consider carefully the types of companies and organizations it will do business with and how the rights of Ontario consumers are affected.

In the past 14 months, our company has responded to two government RFPs that were put out in the industry. In both cases, we received a letter indicating that while we had met all the requirements for the RFP, we would not be invited to make a presentation. That does not sit well with me. It seems to me that we are welcome to volunteer our time and expertise to help develop a course in green energy technology at the University of Ontario, and we are welcome to hire Ontario workers and pay our Ontario taxes, but when the government looks to hire a company to install the very products we are experts in, we're not welcome at the table, even after demonstrating that we have the expertise and technology to do the job.

The 800,000 smart meters could translate into an influx of \$120 million to \$200 million in the next 22 months. By the time full implementation has taken place, the Ontario Energy Board estimates that the total capital cost of smart metering implementation will be \$1 billion. The government, you, will have to make a choice: Will the money be spent here in Ontario, creating jobs and stimulating the economy, or will it be spent on companies that send the jobs to call centres in the United States and India?

This exporting of Ontario taxpayers' money has already begun. In February 2005, Wasaga Distribution hired Itron Inc. of Spokane, Washington, to implement a smart metering pilot project. Also in early 2005, Ontario Hydro announced the awarding of a 25,000 meter pilot project to two partners: Rogers Wireless and Smart-Synch, a company whose corporate headquarters are in Jackson, Mississippi.

My personal request as an Ontario citizen, taxpayer, employer and business owner is that the Ontario government take action to keep this business here at home. At the very least, establish regulations requiring companies making smart metering installations to have minimum

minority ownership content and provide regulations that protect consumers from contracts they did not sign.

Smart metering will benefit citizens and consumers alike. It will take pressure off our grid during peak hours, and it will help to create the culture of conservation that is part of the goals of our minister. Specialized smart meters will also make it possible to net-meter renewable energy sources, giving credit and advantage to those who invest in the green energy sources that I believe are our future.

The McGuinty government has made a firm commitment to the environment. Now you need to reinforce that message by renewing your commitment to business in Ontario.

Keep Ontario's money at home. Help guys like me hire more assemblers, more product development staff, more programmers, more quality assurance staff and more electricians.

Whether the Ontario government pays for smart meters or consumers are required to pay for their own meter, make the cost of implementing smart metering less bitter by assuring Ontarians that their rights as consumers will not be sold to the lowest bidder and that the \$1 billion will go directly back into Ontario. Give Ontario citizens a financial justification for this whole process that can be counted in jobs and economic growth.

The Chair: Thank you very much, Mr. Beacom, for your deputation. We have ample time for questions. We'll start with the NDP. About four minutes, Mr. Hampton.

Mr. Hampton: As I read your brief, and I've heard some of the other submissions, there's going to be a fair amount of money involved in smart meters, the support systems and everything else that goes along with them.

Mr. Beacom: Definitely.

Mr. Hampton: We've had some folks, particularly from the local distributors, say that they think the cost will be in excess of \$1 billion; that it could be in the neighbourhood of \$2 billion. Do you have a sense of that?

Mr. Beacom: I would say, Mr. Hampton, that it would depend on the infrastructure that goes along with it. It would depend on what else it wants to be added to the infrastructure other than just the meter-reading information. Infrastructure is what will probably cost the majority of the fee for the whole thing, because it's a matter of gaining the data on an hour-by-hour basis in order to do this. There's a lot of entanglement as far as whether they're going to put voice-over IP, whether they're going to use it for Internet resources, whether or not there are many other things that are going to go along with it to make it more economically feasible and to basically hand the costs off to other people. That's really what it comes down to. It's not strictly a metering cost, but it's being boiled into one.

The whole economy and the concept behind it is a great concept, no less than the phone companies used to have. I can remember when our kids were small, we used to come home at night, the kids would pick up the telephone and my wife would yell at them, "You can't do it

until after 6 o'clock." It's the same sort of thing. It's educating the young people to understand it, and then the whole thing will take shape. There's merit to it. But whether it's going to cost over \$1 billion or not depends on how big the infrastructure is that they want to put in place.

Mr. Hampton: One of the issues that was raised the other day is that a lot of customer information—your financial information, your consumption etc.—will now be available to this entity, whether this is a smart meter entity or whether it's a private corporation. One of the issues raised was that there ought to be some privacy protection here: what this information can be used for, who can use it, who can access it. Do you have a sense of that?

Mr. Beacom: Yes, absolutely. It even tells you when you get up in the morning, when you leave for work, when you get home at night. You can tell everything off of this. I'm just being honest. But we have a very strict privacy issue in our corporation where we don't allow anybody any access to that data except for the information they need for customer service. That's very, very true.

Mr. Hampton: Do you think a privacy clause ought to be added to the legislation?

Mr. Beacom: Most assuredly. Unless you're dealing with people who have 100% integrity, it definitely should be, because just watching your electrical usage provides so much information. We can profile things down to a minute in our company. We've been doing it for the last seven or eight years. You can tell everything. Even as dramatic as when somebody flushes a toilet, you can actually tell, because it's 10 litres of water and it gives you one pulse in the middle of the night. Basically, we monitor these things in places everywhere. So it's very important that privacy is maintained. It's a very private thing.

Mr. Hampton: Whether this is a \$1-billion cost or a \$2-billion cost, have you seen any cost-benefit analyses that say that for a \$1-billion cost you can expect to have shifting of peak electricity consumption by this amount, or for a \$2-billion cost you can expect to have shifting of peak electricity consumption by that amount? Have you seen anything, either yourself or from the government or from anyone else?

Mr. Beacom: We have countless amounts of data on metering systems and putting metering into buildings that aren't metered. Basically, there is a shift. We call it the 60-40 shift. Like the people ahead of us indicated, in an apartment, 60% to 65% of their utility is in the suite—that's absolutely true—before it's metered. Then the thing turns from a 60-40 to a 40-60. In other words, the suite uses 40% and the common area uses 60% after the suites are metered. That basically saves you about 32% in your overall energy after about three years. From a metered building to a non-metered building, that's the difference. We've got countless amounts of statistics to prove that right now in our company. We have—

The Chair: Thank you, Mr. Beacom. We'll move to the government side. Ms. Mossop.

Ms. Mossop: Thank you very much for your presentation. Just following along, the information that you have shows that there is definitely a cost benefit from installing a smart meter.

Mr. Beacom: Definitely. Let me be totally fair to everybody. It's too early to tell what the cost benefit will be for the smart meter, because there's nobody billing from a utility side in a smart metering way. But it's definitely a benefit to put meters on people who aren't metered. That will incorporate larger savings down the road, where people are more educated to use power in off-peak periods than they are now because there's no advantage for them. I'm afraid we're all made of flesh and blood and if you don't have an advantage, people won't do it just because they're nice people all the time.

1400

Ms. Mossop: Why did you get into the business of smart meters?

Mr. Beacom: I was in the electrical contracting business for 23 years of my life, and I left it as an owner of one of the largest electrical contracting firms in Ontario in 1989. I travelled North America as a consultant, and I thought that the idea of setting up metering systems and being able to meter people electronically was a unique idea. I started the company as one person behind a desk and now I have three companies that I own in the smart metering business, one in the United States and two in Canada. It was basically a way to pay back from the contracting field—a technology that is available to us that nobody wanted. In 1991, when I started the company, everybody looked at me as if I had two heads—well, they still do, in a lot of ways.

Ms. Mossop: You have mentioned we're all flesh and blood and without some sort of an incentive, we're not likely going to be very effective in creating a culture of conservation. We need something a little more, shall we say, that appeals to our intellect and our pocketbook. In your vast experience, do you think Bill 21 is on the right track to that?

Mr. Beacom: I think it does. It offers a way of leadership which we haven't seen before. It provides an ability and a tool to move forward. It probably needs some culture and some supervision in its implementation, but I think it definitely is a good thing. It can't help but benefit the people of Ontario overall. Whether it's \$1 billion or \$2 billion, when you look at the difference between the debt that Hydro One has created over the last years of \$20 billion to \$40 billion, I think it's a small investment for probably large results in comparison. That's my opinion.

Ms. Mossop: Very good. Thank you very much.

The Chair: Mr. Delaney.

Mr. Delaney: As a consultant, I'd like to tap you for a piece of information here. I'd like to get some information to enable me to assess whether the proposed monthly per-meter billing fees by LDCs are reasonable in the circumstances, so here's my scenario. Presume that 100,000 smart meters are installed in a particular LDC's service area in the GTA. What, in your experience and

your opinion, are the data collection, data processing, billing and other charges that need to be amortized over those 100,000 meters for the LDC to break even; in other words, in your opinion, the reasonable per-unit cost by the LDC to deliver service to a smart-metered household?

Mr. Beacom: I guess it depends on how many golf tournaments they're running that year. I would say that they're probably going to need between \$1 and \$1.50 to handle the data, they're probably going to need between \$2 and \$3 per month to purchase the product and they're probably going to need somewhere in the range of the balance of the money to run their own operations, their line maintenance and their operations. So that's probably in the range of \$10 to \$12.

Mr. Delaney: Does that include just the transaction costs to a smart meter or are you including the cost of the electricity—

Mr. Beacom: There are a number of charges that go into reading the cost of a smart meter. There's the data that have to be dealt with and there's the configuration, depending on how many tiers of rate structures you have. It's a little bit undetermined at the moment what that's going to really involve and how many other factors are going to be composed in the software that's going to require that. All in all, they probably need right now somewhere between \$6 and \$7 to run their infrastructure, I would estimate, so that would be on top of that. They would probably need these \$2 to \$3 figures and \$1 and \$1.20 figures. Their billing process should be much more streamlined. So maybe their \$7 to \$8 cost would drop.

The Chair: Thank you very much, Mr. Delaney, and to you as well, Mr. Beacom, for your deputation today.

JV ENERGY SERVICES LTD.

CB AUTOMATION INC.

The Chair: I would now invite our next presenter to come forward: Mr. Volling of JV Energy Services. As you've seen the protocol, you have 20 minutes in which to make your presentation.

Mr. Jurgen Volling: Mr. Chair, I'd like to thank you and the committee for the opportunity to speak to you today. I would like to talk to you about the utilization of bi-fuel standby generators as a demand-response resource for LDCs. As you know, there are many standby generator sets all across our country, and in the United States there was a statistic that indicates that about 15% of generating capacity is emergency power. So if we apply even 10% to our 30,000 megawatts in Ontario, we have roughly 3,000 megawatts or more of standby capacity.

Some of the issues I'd like to address regarding standby generators: I'd like to propose utilization of these standby generators, because they're idle 99% of the time, the capitalization is already in place, it's been spent, and so, for a very low cost, these can be brought online for peak shaving, and it is the lowest form of immediately available power in Ontario. I'd like to propose that.

We know that with standby generators, some of the issues are limited fuel storage capacity. Also, if they are not utilized, then they become unreliable. We have records that in the August 14, 2003, blackout, 30% of the standby generators did not start. So obviously, regular operation would make them more reliable.

Also, the issues we face in Ontario in the energy sector: One is a shortage of supply; the other is that central Toronto has no generating capacity at all because the Hearn generating station was shut down and the Lakeview generating station is now shut down. It was a peaking station, both coal-fired. Lakeview closed in April 2005. I worked at the Hearn generating station in the maintenance department way back in 1963 and 1964, so I go back a long way in the energy field. I also had an opportunity to look at the Hearn station, and they had about 600 megawatts of peaking capacity. Half of it was shut down because of old technology. Even the later technology made it inefficient.

The other thing I'd like to mention is the fact that the coal-fired plants are going to be phased out, but the interesting thing is that coal-fired plants are excellent load followers, and we really have nothing to replace them with. So in the morning, when Ontario moves up 3,000 megawatts per hour or 60 to 70 megawatts per minute, coal-fired plants are excellent load followers, and when they are phased out, additional capacity will be required.

I'd like to propose a technology that's been around for about 15 to 20 years. It is a bi-fuel technology where we can convert an emergency diesel engine, in about four hours for a small one and one or two days to convert one- or two-megawatt units, to operate on natural gas—typically up to 80% natural gas displacement of diesel fuel, no spark plugs and no maintenance required for 40 years on this installation.

Basically, all we do—I have a sample here—is install this venturi. Natural gas is supplied here at 1 psi. The air comes in, mixes at the other end and goes into the engine. That's a fixed item that requires no maintenance. So we have 3% gas going in, and it displaces 80% of the diesel fuel. The power valve that regulates the flow is this here, and it's fully adjustable. Once it's set, you can let it sit there for 20 years and make no adjustments. That's what I propose for standby generators.

1410

We have done a pilot installation. There are roughly 20 systems in Ontario now, including OPG, the Toronto Stock Exchange, First Canadian Place—on the 72nd floor, we converted a 750 kilowatt Caterpillar. The Whitby Hydro installation is uniquely different because a fully automated web-based wireless technology has been applied to make it dispatchable based on the IESO pricing. Maybe my friend here, Bill Khashfe, would like to address that as well.

Mr. Bill Khashfe: Committee members, thank you very much for giving us the opportunity to be here. I would like to show you this picture, which is in your lectures here. It describes the system that has been

implemented at Whitby Hydro. Actually, what I'm going to point out in the next two minutes is simply to make you feel comfortable with a technology that is actually very normal for people from the field of automation. It's like when you have a car and you switch it on in the winter; you switch on, wireless-wise, your car from home, and it goes on in the garage. That was not possible 10 years ago. Nowadays, it is very common. In the same situation, we have here a technology that is implemented and we have a pilot project that's up and running, and you can see it at any point in time at Whitby Hydro.

The picture that I'm showing you here is simply that you've got a PC which is linking to the IESO information, and the PC is also connected to the controls that are positioned at the diesel generator, the standby generators. The standby generators themselves can be grouped into groups of networks, and that's it. This is the system, and it is up and running and can be used. That's all. Thank you.

Mr. Volling: It's available for anyone to inspect it, as well. It's a leader in Canada.

If you could maybe also take a look at the sheet called "Some Independent Customers," you can actually see how many standby generators there really are out there. When you look the sheet, Bell Canada, for instance, has 400 megawatts of emergency power. Most people don't know that. There's one building downtown that has between 15 and 20 megawatts in it. Commerce Court downtown: I sold nine of the 13 generators in there. Just recently, the Bank of Montreal put 30 megawatts in a building in Barrie, so they're all over the country. These are available, dispatchable, and with this automated system it can be done very quickly. Even the casinos and other places have large generating capacity.

The government has recently introduced the CDM program, the conservation and demand management program, with demand-response and also with demand-side management. Funds or incentives are in place to put some of these pieces of equipment into force and give excellent payback for the customer and for the utility. The utility has the opportunity to place these where there's constraint, to have a generator run to reduce the load and therefore improve the quality and also get a payback. This is a system that has been around for 15 to 20 years. I believe one barrier that we face is the Ministry of the Environment certificate of approval. It seems to take sometimes over a year to get a certificate of approval.

The last point I want to mention is about opening a third category. They have standby classification and prime power with 24-7 operation. I have an economic model in here where 200 hours per year is more than enough to get a payback on this simple investment. That's my proposal.

The Chair: Thank you very much, Mr. Volling and to your colleague. We'll now move to questions and comments. We'll start with the Tory side. Mr. Yakabuski, you have about four minutes or so.

Mr. John Yakabuski (Renfrew-Nipissing-Pembroke): Thank you very much for joining us today. What you're

really talking about here is emergency power to be used at times that normal power is not available. Is that what we're—

Mr. Volling: That's right; when there's a power failure.

Mr. Yakabuski: That's what we're looking at? It's very interesting stuff. I would only be fooling myself if I thought I was any kind of an expert on it, but it's interesting stuff. Maybe I can ask you a couple of questions about electricity in general, because you seem to have, obviously, a long history and knowledge in this field. You talked about the coal situation. The government is doing a real fancy dance right now about the coal. They don't seem to really know just how committed they are now. We're hearing different things in the newspaper. But it would appear that a lot of experts are coming together on this now and saying—

Mr. Volling: There's a problem there, yes.

Mr. Yakabuski: —that they simply cannot do it. This wasn't a revelation today. Therefore, I guess my question is, why haven't they done something—

Mr. Volling: I'll give you an explanation as to why it will be delayed.

Mr. Yakabuski: But why wouldn't they have done something to clean up these coal plants we have instead of wasting all this time? Now it's becoming more and more apparent that they're simply not going to be able to meet those targets.

Mr. Volling: The issue is that nuclear power plants—I did my thesis on the nuclear reactors, so I'm familiar with the design of the reactors. I also sold emergency generators to all the reactors, to Romania, to Korea and so forth. Nuclear has to be baseload, and right now we have something like 36% nuclear, about 25% water and about 22% coal. If coal is decommissioned—it is an excellent load follower. If a block load is found, if a generator fails, load is picked up by coal. Wind can't do that, and nuclear must run baseload day and night. That's the problem: that they have no replacement for coal. That's why it has to be delayed. The other thing is that Nanticoke has eight 500-megawatt units—4,000 megawatts—and if that's shut down, there's transfer of power into the GTA, which cannot at this moment be blocked. They are going to run some generators as synchronous condensers or capacitors to boost power to our area. So coal is necessary for a little longer than next year.

Mr. Yakabuski: So why do you think the government—is it simply blind ideology or just playing politics with energy, or what would prompt them to make those kinds of promises?

Mr. Volling: I think they have very good plans for bringing in gas-fired to supplement or substitute or displace some of that power, but it sometimes takes three years to get a gas plant on stream. That's the reason. Everything is a bit shifted and delayed, so when something comes on and this goes off—but water is at 25% in Canada, and it is somewhat a load follower. In Niagara Falls, we have water storage in our reservoir, so if there's a load change, we can dump that water and give the

power, but if you don't have storage you can't make up the peak. Coal is excellent for that. I worked at the coal plant for two years, so I know all the systems.

Mr. Yakabuski: On the smart metering, there seems to be a lot of debate as to whether or not it's really going to provide the benefits that they're talking about by instituting it in 4.5 million installations across the province. Do you think we're going to see savings that will justify it for residential use, or is it primarily commercial use where this would be the best bang for your buck, so to speak?

Mr. Volling: I'm not an expert on that, but I have an opinion. There will be a clear delineation as to who uses what and when, but whether the private consumer will be able to adjust conveniently or go through the inconvenience of shifting, or even be available if they work at different hours—

The Chair: We'll have to leave it at that. Now to Mr. Hampton.

Mr. Hampton: I just want to be sure of a point you're making here. I'm aware that, for example, many of the power authorities in New England, when they hit peak electricity periods, offer companies financial incentives to either curtail their operation or in some way reduce their electricity consumption. In other words, the power authority pays companies to start shutting down some of their operations or curtail their electricity consumption. What I think I hear you saying here is that there is extra generation capacity out there, that if you provided the right kind of financial incentives, you could use it to meet peak demand, and that currently this is not being used to meet peak demand, that it is essentially a privately-owned electricity resource that is not being used to meet peak demand but is on standby in case there's a complete shutdown; in other words, a blackout.

Mr. Volling: That's right.

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Mr. Hampton: So I just want to get a general sense from you about what kind of financial incentives would be—in layperson's terms, what would we be talking about here per kilowatt hour? What's required?

Mr. Volling: If you look at this chart here, I have a cost in here: up to 44 cents per kilowatt hour. This is the 2003 hourly rate. For August 2002, it showed 44 cents per kilowatt hour. So if it costs 10 cents or 12 cents per kilowatt hour to generate, we have a signal right now at Whitby Hydro that would start that generator, because you can generate at 10 cents to 12 cents and you're going to pick up that saving here; the utility, when it feeds into the customers, picks that up.

Mr. Hampton: Right now, these generators are solely under the control of, let's say, the bank or solely under the control of Bell Canada.

Mr. Volling: That's right, so there has to be an incentive to release that.

Mr. Hampton: Not only would you need an incentive, but you'd need protocols and everything. In other words, it would be, let's say, Toronto Hydro or Hydro One that would automatically, by wireless con-

nection, say, "We've hit this price. We're now going to use your generating capacity." Is that right?

Mr. Volling: Right.

Mr. Khashfe: Basically, it is a possibility, as you now consider. The ISO has the price, and that can be issued for the operators on the PCU, on their screens or pagers or whatever technology they prefer. They get the price. At this level, when they see that they are above the penalty price, then there are many possibilities to dispatch the generators, and therefore we have here two situations: they can feed into the grid or they can balance the grid load.

Mr. Hampton: Both of which would be important.

Mr. Khashfe: Exactly.

The Chair: We'll move now to the government side.

Mr. Kevin Daniel Flynn (Oakville): My familiarity with a standby generator is that the fuel in a plant or in some operation—if the electricity supply is interrupted for some reason, it needs to go to some other source of power either to fuel its emergency systems or pumps that just have to work, that type of thing.

Mr. Volling: A water pumping station.

Mr. Flynn: So what you're suggesting is that all the infrastructure that we have in place could be used to supplement the electricity supply on a regular basis.

Mr. Volling: And it makes it more reliable. If you drive your car every day, it's more reliable than if it sits six months in the driveway.

Mr. Flynn: Probably the best buy you could possibly make if a refinery shut down would be to buy the diesel generator, because it's probably got about eight hours or something on it; it's almost a brand new engine, these things, when they're run properly. Would you have to replace the generators on a more frequent basis if you were running them more frequently?

Mr. Volling: Just to give you an idea on life, a slow-speed 1,200-rpm engine takes about 25,000 hours for overhaul, and for a high-speed engine, about 1,800 rpms, it's about 12,000 to 14,000 hours. If you're running it at high output, it would be less than that. But we're running 200 hours a year, so it wouldn't affect the life; it makes it actually a cleaner operation and more reliable.

Mr. Flynn: To answer a previous question, you were saying you could feed into the grid as well. You wouldn't need the power interruption; you could simply add to the supply.

Mr. Volling: Just come on stream.

Mr. Flynn: You refer to it as a bi-fuel system. It's a diesel generator that's being converted to natural gas.

Mr. Volling: Right. But we use no spark plugs, so we only have gas coming into the air cleaner, into the turbo charger. We do no modification to the engine. This takes 20 minutes to hook up. Everything else can be done ahead of time.

Mr. Flynn: Presumably it would run on biodiesel as well?

Mr. Volling: It's 80% natural gas, 20% diesel.

Mr. Flynn: Biodiesel as well, not just—

Mr. Volling: Biogas, yes, or sewage or—

Mr. Flynn: There's a picture in the presentation where there seems to be a containerized sort of compound. Would each one of these contain a diesel generator?

Mr. Volling: Two megawatts each, so 60 megawatts; there are 30 units.

Mr. Flynn: What is that one supplying, the picture you have there? Where is that taken?

Mr. Volling: It's in Washington state.

Mr. Flynn: What does it do?

Mr. Volling: I'm not familiar with what its function is, but they have SCR, selective catalytic reduction, systems on the roof and the bi-fuel systems inside for emissions control.

Mr. Flynn: Your company—

Mr. Volling: We provide this and install it.

Mr. Flynn: Your interest would be, obviously, that if we had more of these, we'd need more of those.

Mr. Volling: Right.

Mr. Flynn: The one at Whitby Hydro—we've got a picture of that here too—what happens? If something happens and they need more power, this kicks in, or they turn it on?

Mr. Khashfe: Exactly. It's a pilot project to synchronize, let's say, to read the ISO price level and be able to dispatch loads on and off base on the specific pricing which can be set through contracts.

The Chair: Thank you, Mr. Khashfe and Mr. Volling, for your deputation on behalf of JV Energy Services.

GREEN ENERGY COALITION

The Chair: I would invite our next presenters, Mr. David Poch and Mr. Millyard, from Green Energy Coalition. Could you come forward. As you've seen, it's 20 minutes for presentation and the time remaining for questions and comments. Please begin.

Mr. David Poch: I'm David Poch. I'm counsel to the Green Energy Coalition, which is a coalition of environmental groups active on energy policy regulation in Ontario. It includes the David Suzuki Foundation, Eneract, Energy Action Council of Toronto, Greenpeace and Sierra Club. I assume committee members are familiar with those groups in rough terms. With me today is Kai Millyard, who is the research director of the GEC, so if you stump me, I'll drag him forward.

The coalition was formed about 15 years ago to intervene in regulatory proceedings. I've provided you with slides. I'm basically going to follow through those slides.

Our member groups have, between them, about 40,000 members and supporters in Ontario. We're active in several hearings every year before the energy board, both on the gas and the electricity sides. Basically our agenda is to get the rules right at the energy board so that these utilities are active on conservation and renewables.

In general, we welcome the advent of Bill 21. We appreciate that it's just enabling legislation. We have one principal message to you today, which is that the act is an

opportunity to clean up a rather big problem we're having in Ontario right now, and that's the lack of a clear primary directive from the government which the OEB and OPA are obliged to follow. I'll get into some detail here about how the problem has shown up, but first let me give you a little background about what motivates us and what we hope will motivate the committee and the government in particular.

The conservation resource: When we hear the debates raging about supply in Ontario, everybody does lip service to conservation, but it's our perception that a great many of the public debaters at least don't appreciate just how dramatic a role that term has in the equation.

If you look at what's occurred in the States in particular, you see that American programs before 1996—so this was up to a decade ago—had already produced measurable conservation program results—and by “measurable,” I mean that these tend to be independently audited results—where they've netted out free riders who would have done the conservation anyway and what have you. The numbers then, at that point, added up to a lowering of electricity demand by 29,000 megawatts, which is more than the entire load in Ontario, and not insignificant.

More recently, if you flip over, you'll see some California information. You can see from the graphic that a lot of this has occurred more recently than the 1996 number I just spoke of. California, obviously feeling the pinch more than most places, got into this in a bigger way than others. They've already displaced something in the order of 12,000 megawatts of generation—huge numbers.

But we don't have to go just to California. If you look overleaf, you'll see some statistics there. A recent survey conducted by the American Council for an Energy Efficient Economy, published in 2004, found that in 10 US states where they were getting serious about conservation, they could reduce overall utility electricity sales an average of 0.4% per year. Each year that they conducted these programs, they brought down the slope of the line almost 0.5%, and the leading ones—which aren't just California, but also Connecticut, Rhode Island, Massachusetts and Vermont—were doing twice that.

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Keep that one number, 0.8%, in mind when you look at the next page and you see what the growth rate of electricity consumption in Ontario has been, and is. There's that steeply declining set of blocks. Back in the 1950s—“Live Better Electrically”—every year, 7.9% more power than the year before was required. But when you go to the most recent 15 years there, we're down to 0.5%. In the last 15 years, Ontario's demand for electricity has been increasing only by 0.5%. Referring to the slide before, we see leading utilities that get into conservation in the States producing savings of 0.8%; in other words, more than enough to offset growth and put us on a negative trend line.

I make the point in the next slide that perhaps the two leading jurisdictions, California and Vermont, did this in

part by a goal—a systems-benefit charge, a spending target—that was put in place for the utilities. You might think that these would be the utilities that had picked all the low-hanging fruit and exhausted matters, but in both jurisdictions in the last year, the regulators—or the legislators, in the case of Vermont—have removed the cap on spending and said to the utilities, in the case of California, and to the efficiency utility, in the case of Vermont, “You know what? If you can do more, great. Tell us what you can do. We'll take anything that's cost-effective,” and they are going back and trying to do that.

In contrast, if you look at the next graphic with the many vertical bars, here's what's happening in Ontario so far. I think it's fair to say we're off to a slow start. This graph shows the amount of spending on efficiency programs as a percentage of the total revenue that's taken in by the utilities in each of these jurisdictions. Indeed, you can see Canadian examples there, with Manitoba leading the pack at 3.44%, British Columbia in the middle of the pack and Quebec at 1.46%. It's common practice in all these utilities that all of the spending has to be on programs that have been screened for cost-effectiveness compared to the supply alternative. So far, what we have in Ontario is what I thought was a great idea. The government, getting the ball rolling, said to the utilities, “You can have the last tranche of your return on equity that had been frozen in the rate freeze. You can get it a year early if you pledge to spend it on conservation.” That was great. That amounts to the number you see there, 0.17%. But it's clear from this chart that that's just the tip of the iceberg. All these utilities in Canada and the United States have shown THAT you can cost-effectively spend far, far more, and we want to see that happen.

Overleaf, we have a little more history on the gas side. We discuss the Enbridge example. Enbridge is doing a good job as the leading example of gas utility conservation in Ontario, but still, they're spending seven tenths of a per cent of their revenues on efficiency programs. The DSM budgets in North America average 1%, and leading utilities, two or three times that amount. Even the Canadian example, Gaz Métropolitain, is at 2.3%. We haven't been able to overcome resistance, either at the regulatory board or amongst some consumer groups that tend to have a very near-term focus on rates, instead of looking at customer bills overall. So there's been a lag in Ontario.

Even though these are highly cost-effective—Enbridge in the last 10 years has spent \$80 million on these programs, and they've saved over \$1 billion for their ratepayers; those results are vetted by valuation reports, by a committee of stakeholders and by an external expert auditor, and then accepted by the Ontario Energy Board—the problem boils down to this: At the energy board, the board, despite very nice general objectives in its act, does not have clear authority to tell the entities it regulates—such as the local distribution companies, the transmission utility or the Ontario Power Authority, which it regulates at some level—that it wants them to go and get the stuff, and it can't insist on it.

The most recent clarification on that—we're awaiting another one at this point; there's been another motion since then. In November, chair Howard Wetston of the energy board gave a decision; this was in the context of the York region supply discussion about added transmission there. We've reprinted it here. He says that LDCs, and indeed the OPA, are at liberty to invest in conservation "at their discretion," but "the board does not have the authority to direct them to do so."

I think that's a pretty stunning gap, in the regulatory context. We're talking about the Energy Conservation Leadership Act here. We thought this was a perfect opportunity to fix this problem, and we hope this will be seen as a friendly suggestion to all sides of the debate.

The OPA: Similarly, there has been a problem. I think, to be perfectly frank, what's happened with the OPA is that the government was reasonably clear in what it asked of the OPA. It said, "Go out and tell us what we can do on conservation, what we can do on renewables, and then give us some advice on what we do to meet any gap, if there is one, after that." That's what the government said, and I give them credit for that. The OPA, on the other hand, didn't seem to hear that, although if you read their report—and it says what they were asked to do—it fairly clearly recites that. What the OPA did was spend a year. They didn't have the data, and there are some good reasons why that data wasn't readily available, but that didn't stop them. They didn't have the data on conservation. That didn't stop them. They took the lowest in the range of conservation estimates that their conservation adviser gave them, built that into their forecast, and then said, "We're going to build nuclear and we're going to go with renewables." They say they're open to more conservation emerging, but what happens, if you look at their scenarios, if the conservation emerges? What do they change? They back out the renewables.

So what they're effectively doing is saying they are going to commit to nuclear come hell or high water, and conservation or renewables have to yield even if they are more cost-effective than the nuclear. They feel pressure. They want to get on with it and commit to nuclear. So they haven't heard the government speak about what priorities the government again and again has said, although I think—I don't want to be too nice to you here—the Premier's office has been perhaps a little too welcoming of nuclear for the taste of my clients. I should be clear about that. But I think the OPA needs a clear direction. Here again, by giving a clear list of priorities in this act, you have an opportunity to direct them to do the job that has to be done on conservation. If they want to make a case for conventional supply, they first have to do the job that has to be done on conservation and renewables.

We've given you some examples here. I won't deal with them in detail, but they're predominantly examples from the States, the Northwest Power Planning Council. We give examples of where they have broad legislative priorities such as least-cost planning, and then they'll also give specific lists of priorities. They'll say, "This

first, then this, then this." We suggest that kind of approach works. We see it in Wisconsin. We see it in California; they call it a loading order. It came there from the regulator as opposed to the Legislature, but it was approved by the governor in that state.

So we come to our recommendation: that you add a prioritizing directive—not just a preamble but an actual directive—to the OPA and the OEB, saying, "Here are the priorities when you conduct your business." We've listed them; I think no surprise coming from the environmental groups.

The first priority: all cost-effective conservation and demand management; second, all cost-effective renewable generation; third, imports of renewable generation and acquisition of all cost-effective cogeneration; fourth, and only to the extent that these higher-priority resources cannot provide for Ontario's energy needs, centralized, non-renewable generation can be considered.

I think if that were said with a firm hand, it would go a long way to getting the OPA back on course and, in the process, might help take a little pressure off the government, to be frank.

We had two caveats: first of all, that in considering the mix of these options, due regard be had to the benefits of decentralized options such as the reliability, reduction in wire losses—in Ontario, something like 7% or 8% of electricity goes out the window from the wires—and the long-term saving in distribution and transmission wires investments when you go with a decentralized option; and finally, that the words "least cost" be the marching order for the OEB in its regulation of all the entities, including the OPA that it governs. In fact, if you use that, you've really captured the first caveat, because they should account for all the costs when they do the calculus.

That's our presentation. I'm happy to receive questions.

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The Chair: Thank you, Mr. Poch. We'll have about a minute and a half per party, beginning with you, Mr. Hampton.

Mr. Hampton: I want to ask you about your graph about California. It's got appliance standards, and it looks like appliance standards in California now get you about 2,000 megawatts a year saved. It looks as if building standards get you about 4,000 megawatts a year saved. Just so I can define "utility efficiency," is that demand response?

Mr. Poch: No, that's predominantly conservation programs. The utility goes out and runs programs of various types, offers incentives for people to invest in conservation. I should say, there will be some demand response in there as well. They're probably all rolled into the same group of programs.

Mr. Hampton: So could you give me some examples?

Mr. Poch: Conservation programs? Well, we have some in Ontario: the EnerGuide for Houses program, where typically utilities sometimes chip in, the federal

government chips in, and groups like the Green Communities groups go out, audit homes, provide homeowners advice. If they invest in the conservation, there's an incentive—

Mr. Hampton: You're talking about retrofits.

Mr. Poch: That's a retrofit example. You have programs for new construction in commercial, industrial and residential. There's a wide range of programs.

Mr. Hampton: So you're talking about building retrofits above and beyond building standards; in other words, taking older buildings and retrofitting them.

Mr. Poch: Yes. And standards can't always fit every situation. So even for new building construction, you need incentives for architects and engineers to design in efficiency beyond code.

Mr. Hampton: So can I ask you, based upon that and your other statements, is that where you would advocate government put its money?

Mr. Poch: I hear you. I think you need a mix of strategies. I don't disagree with a mix of strategies. Demand response is very important. It deals with the narrow peaking problem. Strategies such as we just heard for the needle peak are important. Obviously, renewables have a huge role to play, but what we're here to say is, conservation is.

Mr. Hampton: One more question—

The Chair: Thank you, Mr. Hampton. We now move to the government side. Mr. Brownell.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): Thank you for your presentation. You made comments about other jurisdictions and what was being done. You commented about Northwest Power Planning Council's goal. What have they done to be effective, and how effective has it been? You commented there with the least-cost planning context being used. You brought these examples. I just wondered, what were they doing?

Mr. Poch: I don't have hard data for you. It's the same strategy. It's a broad spectrum of approach. I think the point here is, you shouldn't as a government say, "Let's do this program and let's do that program," because the programs are many and varied and evolve over time. I think the task for the Legislature is to say to the regulators, "You make sure, on an ongoing basis, that we get the least-cost result." You regulate the utilities and the power authority—the local utilities and the transmission utilities—so that, on an ongoing basis, it's their business to find these savings.

Avery Lovins once said that conservation is like eating lobster: You've got to pick out all the little interstices to get the meat. There's no one magic bullet. You need a broad and ongoing and flexible approach, and the way to do that, in our view, is to harness these various businesses that you're regulating anyway, many of them publicly owned, but public or private, harness their ingenuity, give them the right incentive, and give the regulator the teeth it needs to insist on the job getting done.

The Chair: Thank you, Mr. Brownell. Mr. Yakabuski.

Mr. Yakabuski: It's interesting in this graph that the province of Manitoba, which doesn't have any issues

with shortage of supply of power, is the leader in North America in funding conservation. Talking about conservation, the present government inherited a program for energy-efficient appliances, which was an incentive program to encourage the purchase of them. They cancelled it sometime in 2004, I think—July, September, somewhere there. One of the excuses that they've given is that it wasn't working because people were taking the old fridge and putting it in the basement. Unless you have a need for a fridge in the basement, it's highly unlikely you're doing that, simply to run a fridge. But it also applied to dishwashers and washing machines, and they withdrew support for all appliances. What are your feelings on that?

Mr. Poch: In fact, some of the utilities have taken their share of that \$166 million a year—or in total from that third tranche of money and started to do some of this. I think Ottawa Hydro has been very successful, and they've designed around this problem. They have a bounty on the old fridge as part of the program. You want to get the incentive. You get them to come and they pick up the old fridge and they give you a cheque toward a new one; that sort of thing.

I think, if you have clever program design, you can make these programs work quite effectively. Obviously, you want to be careful in the design of them so you're not just rewarding people who were going to do it anyway, but you have to expect that you do end up rewarding some people who were going to do it anyway. There's no cost to society in that. It's just a—

Mr. Yakabuski: You're going to do that with a retrofit of homes, too. Somebody is going to be prepared to do it whether they're being paid or not.

In general, was it a good idea for this government to discontinue, at the provincial level, a rebate program for energy-efficient appliances, with nothing to replace it?

Mr. Poch: Our recommendation would have been just to fine-tune the program to resolve those problems rather than to discontinue it. In the end, we haven't lost that opportunity. We have the OPA and we have the local distribution companies that, with direction, could go after that.

The Chair: Thank you very much, Mr. Poch, for your deputation on behalf of Green Energy Coalition.

ROGERS COMMUNICATIONS INC.

The Chair: We'll invite now, on behalf of the committee, our next presenters, from Rogers Communications, Messieurs Harrison, Robinson and Harvey. Gentlemen, please come forward. As you've seen, it's 20 minutes' initial presentation and the time remaining is distributed among the parties for questions and comments. Please identify yourselves, as well, for the purposes of Hansard.

Mr. David Robinson: My name is David Robinson. I'm vice-president, business implementation, for Rogers Communications. I work within the chief technology officer's department within Rogers Communications. I'm

joined today by Mike Harvey, who is with the Rogers business solutions group, and Lee Harrison, who is with Convergent Thinking.

I have to say, it's a pleasure to be here today. It's been a long road for Rogers. About five years ago we started looking into how Rogers could play a part in solving this problem. Mr. Harrison here explained to me the situation and I thought, "This bears some resemblance to our business." Initially, perhaps, you think, "What does this have to do with power?"

We run some fairly substantial communications networks today, and what we find without a doubt in every circumstance is that when you put an infrastructure and an enabling pricing structure in place, customers swarm to whatever it is your pricing indicates they should swarm to. Some of our pricing examples in the past have led to enormous changes in our economics. For example, many years ago we introduced the concept of flat rate, unlimited evening and weekend calling on our cellular networks. The reason for this was that, not unlike the energy industry, we had a peak and we had an off-peak. So it only made sense that, if we were burying billions of dollars of capital in the ground to support the peak supply and extracting our rent for that, we may as well garner some revenue from the off-peak. So we put in place pricing that allowed people, for a discount, since it was "free," to use that network asset for a discount.

What did that do? Incredibly, it drove our capital program to reverse itself. So rather than networks being built for business users in the downtown core during the hours of 11 and 2 o'clock in the afternoon, which was the case 10 years ago, not surprisingly now our peak demand for cellular service is after hours, 6 o'clock and thereafter, in the suburban area. Yet we were extracting a flat fee for an increasingly growing capital base. This is not particularly good economics. At least we have, in our case, the ability to receive an enormous amount of information and to bill for different rates based on the time of day that service is delivered. Whether it be cellular or whether it be IP connectivity over cable or whether it be wireless IP connectivity over WiMAX or WiFi or any of the other wireless networks we deploy, in scale, it's exactly the same problem. If you reward people to do things that are in their best interest, they will flock to it and they will drive your economics accordingly. Five years ago, I was faced with, "This industry looks like it's in a similar situation."

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I won't go through this entire presentation. I'm just going to flip to particular pages. If you look at page 5, this is a one-page view of what Rogers is today. It's certainly a very vibrant company. We are the largest cable television operator today and have a vast majority of our services here in Ontario. We are by a large margin now the largest cellular operator and, very importantly, operate the country's only GSM/GPRS, which is a world-standard, wireless cellular infrastructure.

Recently we acquired the assets of Call-Net, known as Sprint Canada to most of you, getting us into the telecom

business, particularly the long haul. Very important to this discussion, we're also a very significant media player with television and radio stations, very substantial ones, and specialty magazines and Internet content across the country. We are a very strong company in Canada. Just so you know, the page numbers are in minuscule print on the very bottom left-hand corner. It's sort of a test thing.

With respect to Bill 21, we are very much supportive of the objectives of Bill 21. This is on page 7. We think it offers a reasonable framework and allows for a diverse series of solutions to meet the needs around the province. We do not believe there is a single solution to this problem. A lot of times, if you have a hammer, every problem looks like a nail. We come at this thinking, "Depending on where you are and what the needs are, the solution may be a little bit different." We apply the same concept in our core communications business. We invest in cable networks; we invest in wireless networks; we invest in several different forms of wireless—WiFi and WiMAX and all sorts of jargon. But more or less, we believe there is no single communications network to solve the needs of our customers, and the province's customers are the people of Ontario. We don't think there is any one solution that can solve the need here.

We also think any individual solution is likely going to have different communications elements behind it. We see ourselves as the communications provider for a lot of these solutions. Although you may use different technologies, having a diverse set of communications technologies behind us, communications networks, is going to mean that we should be able to fit the lowest-cost network to the solution at hand. We don't have a particularly expensive network and say, "The solution for everything is to utilize this network as part of a solution." We say, "What is the best technology," or communications technology, in our case, "to apply to the problem?"

If you flip to page 9, which has this very simple two-by-two matrix, this basically is the heart of it. We believe that if you're in a downtown, heavily populated area, or if you're in northern Ontario, the probability of having the same solution to solve both of those problems, particularly with the same communications component, is very low. What works in the urban core isn't necessarily going to work in the rural outback, as it were.

If you look at the platform requirements—a lot of the pages after this get into more detail, but more or less we think open standards is absolutely critical. This is where you get to the future-proof world. We have lived at Rogers in an area where we didn't deploy the world standard. We used to deploy a technology known as TDMA cellular. It was an excellent technology. There was nothing really wrong with it. Its only problem was it wasn't the world standard. So it went from 40% of the market to 30% to 20%, and when it got to about 14% of the market, we had to make a very significant decision within Rogers: Do we switch technologies and move to this GSM technology? We decided that was the answer. We looked at the other technologies that were available, but betting on the world standard was, we thought, the

surest thing we could do. Sticking with open standards, IP being one of them, is critical.

Betamax was a superb technology; it's probably better than VHS. Where is it today? The standard is VHS. Mobitex, which is a network that runs those parking meters that give you tickets—they're wonderful things—brilliant technology, probably better than the GPRS network we own today; don't tell anyone. Where is it today? Well, it didn't become a world standard, and as a result, it has fallen away. The developers don't develop for it. All the applications that attach to it cost more. Sticking to standards keeps the cost down, ensures longevity and makes sure the largest number of developers in the developer community write to it.

Public networks: We think that if you're going to provide smart-metering solutions, reusing the public networks that are available is going to keep the cost down. We're in the business of operating networks. We operate them for all sorts of different reasons, providing services to different types of customers. If they're there, it seems logical to use them, rather than building something that's either proprietary or specialized to the task at hand. I just think that's going to keep the cost down.

Security: This kind of goes unsaid, or should go unsaid; unfortunately it can't be. This is critical information. All solutions are not the same; all communications infrastructures are not the same. When we get into discussions with the IT departments of companies about the solutions we support and about what our communications element is to that solution, we have long conversations about the security of our particular networks and about the securities of the partners we bring to the table. It's critical that that be the case.

Future paths: I've sort of spoken to this, but if you're not the world standard—I mean, we're talking about a solution that needs to be in place for 15, 20, 25—a long time. Banking on the wrong solution partner is really going to be a false economy. That sort of ties in to the last point, which is cost-effectiveness. If you save a few pennies here but you end up replacing something in five, seven or eight years, there goes your cost savings up front. Total cost of ownership and the risk associated with betting on the wrong partners are fairly important.

If you flip to page 13, another chart, it looks like that one, we have had some successes in the industry to date. Rogers led a consortium for the Hydro One bid and we were successful in winning a trial of 25,000 smart meters using SmartSynch technology. I believe SmartSynch was here earlier today talking a little bit about that solution. I'll just spend a minute on this page. First of all, SmartSynch was the right solution for their particular problem. Obviously, you're familiar with the mix of customers that Hydro One has. They have some particularly difficult problems to solve. This was a good solution for them. We don't say we're SmartSynch's partners; we say we partnered with SmartSynch for this initiative, and it was effective. Also, if you see under Rogers, it says, "connectivity." Again, for the SmartSynch Rogers solution, we proposed GPRS, because it fit, because it worked for Hydro One in that case. It's not

to say we wouldn't deploy another technology from a communications point of view to get the job done at the lowest possible cost.

If you flip to page 19, I talk a little bit about the media assets. What I see being proposed here is an enabling architecture. If the users aren't aware of how it works or what's in it for them or how to shift their behaviour, understand how to do it and have the response capability of doing something about it, they won't do it, and this whole program would be pointless. Having strong media assets, I think, is something that is going to have to come into play here. Whether it be television commercials or ad inserts, or SMS—we have 5.2 million cellphones. Every single one of our cellphones that goes out the door, whether it be a BlackBerry or a simple zero-dollar phone that we sell, you can get messages to it, whether that be "power prices peak to 20 cents" or whatever. That's the sort of information that gets out there. They're also two-way. It's possible to use them as devices that evoke a conservation effort. We have radio stations all over. Getting this message across to the end user is going to be critical if it's going to be successful.

How's our time? I think we should be all right.

The Chair: You have seven minutes remaining.

1500

Mr. Robinson: We'll end early then and we'll get to questions. I'm sure you want to grill us on all sorts of things. Just make sure that you have our contact information, which is at the very end of the presentation. With that, I'd love to take questions.

The Chair: Thank you very much. We'll start with the government side. Mr. Delaney, about two minutes.

Mr. Delaney: I have a short question, two parts, and both of them are pretty direct. I've been asking deputants to use their expertise to assist this committee with an estimate of what an LDC's actual cost might be to gather, transmit and process smart-metered data and then generate a monthly statement. So here are the two parts of the question: Will you estimate for me what volume of data might be sent on a daily basis over the LDC's proprietary network or over a public network like yours, be that wireless or otherwise? The second part is, based on your expertise with cellphones, where the data is far more extensive than that coming out of an electricity smart meter, what is your actual cost to process the data and generate a customer's bill, net of the amount of airtime consumed and all other charges?

Mr. Robinson: I'll try. On the first part, the volume of data, it's the usual answer: It does depend. A lot of the solutions compress the data. What the actual raw amount is and what actually goes through the network isn't necessarily related. Again, in SmartSynch's case, they encrypt it and compress it so that the data actually goes through the network.

Mr. Delaney: A few kilobytes per day?

Mr. Robinson: Yes. It's fairly small.

Mr. Delaney: That's what I thought.

Mr. Robinson: As far as the cost, what's our real cost?

Mr. Delaney: Yes. Your real cost to generate an invoice for a cellphone customer—just the invoice.

Mr. Robinson: Oh, just the invoice itself.

Mr. Lee Harrison: Your overhead on that.

Mr. Robinson: I'm not actually sure. It's under a dollar.

Mr. Delaney: Okay, that's fine. Thank you.

Mr. Robinson: That includes the stamp.

The Chair: I shall have to conclude the government questioning and move now to the Tory side.

Mr. Yakabuski: Thank you very much. I guess one of the things we're getting at is the cost of administration. Your presentation today would indicate that you'd have some interest in administering this program, should it be implemented. Similar programs in the United States are costing upwards of \$2 a month for administration alone, so I guess that would be one of my questions.

The other thing is that others who have been here in a similar position as yourself have had some privacy concerns with sections of this legislation. Do you share that and would you be proposing specific amendments in that regard?

Mr. Harrison: Would you mind if I answered that?

Mr. Robinson: Please.

Mr. Harrison: In terms of the privacy side of things, I think Rogers is a great example of running some key public safety implementations across the province and the country. There is no question of security there. I think it's a matter of how it's applied in the context of that. I think that's part of the specifications that are coming out underneath this legislation when they're talking about the metering.

Mr. Robinson: We're certainly not concerned about the security. In fact, when we compare ourselves, when we sit down with some of these public safety—our government has very high expectations for security, and rightly so. It usually works out in our favour. We've had a lot of success in that area because it is secure. Whether it's the GSM SIM that we use on our cellphones, for example—that encryption has never been compromised. That's not to say it won't be, but to date, with the three billion SIMs that are out there, we haven't had a breach yet. Of course, that encrypts the air link and you can add more encryption.

The Chair: I'll need to intervene there, gentlemen. Mr. Hampton?

Mr. Hampton: Just to follow up on Mr. Yakabuski's question, this was raised by a couple of people who were here last Friday, who said the legislation needs a protection-of-privacy clause. As one of the deputants said earlier, you could tell what time somebody leaves their home every day, you could tell what time somebody goes to bed every day and you could tell when the house is vacant every day just by this kind of information. Therefore, the legislation needs very strong, very clear protection of privacy in it so that whoever is involved, whether it be a company such as yourselves or somebody selling the meters or somebody collecting and manipulating the data—very clear standards and real liability should something ever happen, either accidentally or

otherwise. That's really the question. Do you think this legislation needs to have strong protection-of-privacy terms added to it?

Mr. Harrison: We're under big terms for privacy anyway. It's something that Rogers believes in. From the standpoint of how we've looked at the legislation, ours has always been—going all the way back to Rogers being the only telecommunications company that was part of the electricity supply task force. We actually contributed to it. We've always come to the table. The policy side for the power market is not something that we are necessarily the experts in. We're the experts in getting you to the point of what you want to accomplish. From that side, it's not something that has necessarily come up in our discussions yet, because we've always looked at our network as being secure. Not having an interest in the back end of it, it's just not something that has come up in our discussions.

Mr. Hampton: I'm surprised that it hasn't.

Mr. Mike Harvey: If I may, the reason is because we deal with the banking institutions and whatnot and, as David said, governmental institutions, so their privacy laws and security around that have to, at the very least, be adhered to. That's why it's actually a given. It's not something we take lightly, but it's actually a baseline that must be brokered, if you will.

The Chair: Thank you, Messieurs Harrison, Robinson and Harvey on behalf of Rogers Communications for coming and as well for your deputation.

AZTECH ASSOCIATES INC.

The Chair: I now invite our next presenters, Mr. Peter Zuuring and Art Skidmore of Aztech Associates. Gentlemen, we've already received your written submission and you are welcome to begin as soon as you're seated.

Mr. Peter Zuuring: Good afternoon, everyone. Art Skidmore sends his regrets. The weather has been playing a bit of a role in traffic this morning. It nearly prevented me from getting here, so I'm glad to be here just the same.

A quick comment on your last presenter, just for interest to the committee: Rogers' cell network would be great for smart metering, but the access charge of \$5 a month is punitive because the actual data charge to transmit is a couple of pennies a month, but you have to pay the five-buck access fee. That's what's stopping it from being used in smart meters.

My presentation to you today is geared to the bill itself. I'm not so much talking about conservation as the bill itself. The first point I want to bring along is that the bill has a number of definitions in it that could exclude Ontario-based development. This is an important aspect. The second issue is that there are no hard goals in the bill other than the deployment of meters. This is very much like suggesting that we need speedometers in cars without having speed limits or an ability to read what your speedometer says. Thirdly, the bill creates further bureaucracy which seems to be ever-spiralling, and I don't know whether that's necessary.

To get specifically into it, I have a bit of a preamble to start with. We're talking about four million meters at a cost of \$100 to \$150 each, so we're talking millions of dollars to be spent over the next little while, with \$800,000 by 2007 and the remaining \$3.2 million by 2010. This is a lot of money that will go out of this province. It behooves us to spend some of that money with companies that have developed the technology here. We've got time. In the first wave, perhaps you buy offshore meters—and most of the meter companies are offshore or in the United States—and in the second wave, there's time for Ontario-based corporations to develop meters, get into this business and keep some of that money in Ontario, for Ontarians and made by Ontarians.

1510

The proposed bill is flawed in some ways in that it is a deployment bill and not a conservation bill. It is really talking about putting smart meters into homes; it's not talking about conservation as such. Very specifically, if you go to schedule B of the bill, section 1, under definitions, the very first definition is "smart meter." "Smart meter" should be changed to "smart metering system." Why is that? Because the meter that we know today is what I'm going to hold up for you. This is the meter that everybody is familiar with in their home. This can be a smart meter; this can be a radio frequency meter; this can be a digital meter; this can be the old-fashioned meter with mechanical parts inside. If we stick with this definition, all the issues of smart metering get done underneath the glass. It's not necessary. Metering is known; metrology is known. What we need beside it is a communication device. So there is metering and there is communication. They don't need to be together, and they are moving in different directions. So the definition of "smart meter" should be "smart meter configuration" or "smart meter system" to allow for developments of various sorts.

When meters first came out, they were mechanical meters. Then the mechanical meters went to digital meters, and digital meters went to RF meters—"RF" meaning radio frequency—so that a guy who had to read the meter, who was making mistakes and had to approach the house and was bitten by dogs, could now walk around the neighbourhood with a receiver in his hand and the meter would transmit the reading, the watt hours, to his hand-held device. The smart meter gets rid of the guy who walks around. The smart meter sends it over a wireless or wired network to the LDC or to some central authority. So it gets rid of that.

This is the latest of the RF meters, before the smart meter. There are thousands of these meters that will become redundant if you go to smart meters. However, if you do what we've done here; we've added a slice, which is a communication device—it can read the meter and transmit it. It can also read the water meter and the gas meter. I'll just pass this around so you can have a look at what's inside. This is an Ontario solution to save money on existing meters. By the way, there's a cellphone on the inside. We don't like using cellphones because of the \$5-a-month charge.

The "smart metering initiative," the last part of the definitions: The government has set a 5% to 7% reduction in the use of electricity as a goal. Why not have that in the bill in some form, some numerical quantity that says, "This is what we're going for"? The meters are only a means to an end; the end is the saving of electricity.

We're talking about saving money without involving the consumer, because this whole smart metering initiative really is a large infrastructure involving LDCs and government and billing people and so on, but it doesn't involve the consumer. That particular slice that you see going around is also involving a home monitor so that the consumers themselves can see what electricity they're using at the time they're using it, not the following day, which is what the specifications call for. You can see what electricity you used yesterday at 8 o'clock the next day. This is like going down the highway with a speedometer, and the cop pulls you over and says, "You were speeding but, I'm sorry, I can't tell you that until tomorrow morning." Or it's a bit like having a speedometer in the trunk of your car and not having it visible to the consumer. The consumer must have the information as it's happening to be able to conserve. You must involve the consumer, and this legislation should reflect that.

When we're talking about increasing bureaucracy, the government is talking about developing an agency that will buy these smart meters. This is a mistake. I think that clause should be removed. The LDCs are buying meters every day. They have been for years. They know what their needs are; they're capable of doing this. We don't need another layer of bureaucracy in the system to buy meters.

The other point is that there is a cost recovery for this entity. Well, you know who is going to end up paying. That clause should be removed also or some very strict limits put on it, because we're talking cost recovery. If it's cost recovery for this new entity, it's the consumer who's going to pay that.

The next issue is one of limiting, again, a small business that could develop innovative solutions for smart metering by having some specifications that make it difficult. You may be familiar with the advanced metering infrastructure specification, which is a subset of this legislation. It gets the smart meter out there, but there's a specification involved. Anybody who wants to bid on it must have 5,000 already installed in the field. When this was brought up during question period, the 5,000 was challenged. The challenge was, "Is there anybody that has such an AMI setup already?" The answer was no. The reason for the 5,000 was to get rid of the so-called basement operators. Is that what we call development in Ontario? Small companies are basement operators that are no longer able to bid on large contracts? It's a Catch-22. We should stop it and not put in definitions that limit the development and possibilities for small Ontario-based development companies.

There's another clause—the very last comment I'll make—talking about discretionary metering activities.

You'll note that after November—I think it was November 5—after that point, no LDC was going to be allowed to have anything to do with metering activities. This is just another example of a clause that's put in that will prevent small companies from getting involved in this business. Anything we can do to remove and keep an eye out for this kind of activity will help Ontarians.

That's my presentation. It's very short and to the point. I'll take some questions.

The Chair: Thank you very much, Mr. Zuuring. We'll have about 10 minutes remaining for questions, beginning with the Tory side. Mr. Yakabuski, you have about three minutes.

Mr. Yakabuski: Thank you very much, Mr. Zuuring, for your presentation. This little device here, you're saying, is something that could accompany many of the meters that we currently have installed, and would extract and extrapolate and send that information in a meaningful way that could actually be used to determine where savings could be made.

Mr. Zuuring: It provides the information of the watt meter. It does it in bins; it does it in the on-peak, off-peak and mid-peak, and of course handles critical-peak as well. Critical-peak was one issue that everybody was concerned about, and, again, a reason for the home monitor, which that device can communicate with and let the consumer know, "In 15 minutes, critical-peak pricing is coming, so get ready."

Mr. Yakabuski: There's been little real information as to where we're going to end up here with smart metering and what we're actually going to get as the meters. There hasn't been a whole lot of information to—

Mr. Zuuring: I can tell you that this is well advanced and that there are several large corporations—one I could name is Itron; another one is Elster and another is GE, those kinds of corporations—which have been in on the conservation and demand management trials. They are very well set up to take a large chunk of this initial purchase. I think you will find that the way the bid will be spec'd, only the large companies can respond.

1520

Mr. Yakabuski: Some of the things we're hearing about is that they're saying, basically, that you've got a meter that can tell you you used X amount of power from 11 at night until 7 in the morning, from 7 in the morning until 11 in the morning, from 11 in the morning to 5 in the afternoon, and from 5 in the afternoon back until 10 or 11 at night. With that kind of limited information, is smart metering going to be of any benefit to the average consumer at all?

Mr. Zuuring: I think it will. To some extent, people will try to use electricity in the low-price period. Some will make those changes; others won't. Load levelling might be a big result, and that would be advantageous, but as far as reducing electrical usage is concerned, it's still out.

Mr. Yakabuski: It's what?

Mr. Zuuring: It's still out.

Mr. Yakabuski: The jury is still out?

Mr. Zuuring: The jury is still out.

The Chair: Thank you, Mr. Yakabuski. We'll now hear from Mr. Hampton.

Mr. Hampton: I'd like you to elaborate on your last comment.

Mr. Zuuring: Unless you give the tools to the consumer, it's going to be very difficult to monitor your own use of electricity. If there are no home monitors involved, you'll be able to go to a website, if you happen to have a computer, and see the next day what the usage was.

Mr. Hampton: From the day before.

Mr. Zuuring: From the day before, which is not that useful. It's like knowing what your speed was on the 401 yesterday. As far as your monthly bill is concerned, it will show you what your different charges are for those different periods, and you may change your habits. I don't think that's a very powerful tool, whereas if you know in your home—"Hey, I'm moving to mid-peak," and you turn the dishwasher off—if there is some indicator the consumer can understand and likes, then you're going to see some results. I think you need to involve the consumer, and the act does nothing about that.

Mr. Hampton: We heard other people say that smart meters may provide people with some helpful, useful information. But the last group of presenters showed us that in California, where you actually get the energy savings is that you buy high-efficiency appliances, or you change the building code so that you have to build energy-efficient buildings, or you provide some incentives for older buildings to be retrofitted. If all you do is provide people with information and the other tools aren't there, there seems to be a hole in this.

Mr. Zuuring: I think there are many approaches, as your other presenters have said, and there isn't one solution. There are devices around that: With your home computer, you can pre-program to turn your fridge off, turn the air conditioning off, at certain peaks. There are all sorts of potential software that can come to bear that can help in this process. There are devices that can be built into homes to shut things off. But you've got your finger, and if you know what's happening, you can turn that air conditioner off. But you've got to know.

Mr. Hampton: One of the disturbing things is that when the Ontario Power Authority did their study looking ahead to 2025, both in the immediate years ahead and in 2025 the most they will give smart meters in terms of reducing peak electricity is 500 megawatts.

Mr. Zuuring: I don't have those figures, I don't know that, but I think smart metering is a step in the direction of paying for electricity at different rates, and it's a step in the direction of perhaps paying for what it costs. It's a step in the process. It's not the end-all story; it's a start. Those meters are able to read every few seconds, but they only report every few hours and they're only mandated at this point to report every hour. So it's hard to say.

Mr. Hampton: One last question, and your brief raises this: Some of the local electricity distributors have said this is really going to be a \$2-billion project, that when all is said and done it is not going to be \$1 billion;

it'll be \$2 billion. So somebody stands to make a lot of money off this.

Mr. Zuuring: That's why we want to keep it in Ontario.

Mr. Hampton: I take it from what you're saying that you're not satisfied so far, from what you've seen of the procedures so far, from what you've seen in terms of the process so far, what you're seeing from the legislation—

The Chair: I'll need to intervene there, Mr. Hampton. I apologize. We'll now move to the government side.

Mr. Delaney: I have a question and Mr. Leal has a question, so I'll get mine done very quickly. Thank you for your very thoughtful, focused, intelligent and very interesting deputation. With regard to the technology, one of the constants of being in the technology business is how quickly competition and the economies of scale drive down the cost of providing the technology itself. Give me a very rough ballpark estimate, in your opinion, what type of per-unit cost you think Ontario LDC purchasers are looking at for, say, the first 50,000 smart meters and perhaps the lot manufactured after about five million have been put into service.

Mr. Zuuring: I think you'll find very little changing in price. I think the price will be over \$100 per meter. There's a discussion of a price per point, which means that it not only involves the cost of the meter but the cost of installing it and the cost of installing the network that feeds the data back to the LDCs or to the central authority, so the prices could be much higher than that. There is a restrictive trade within the meter industry at this point; for example, Itron bought Schlumberger, and Elster is a formation of ABB. There is a consolidation taking place of the large guys, and they're buying out the small ones. With that, you're not going to see a drop in prices. The sale of meters in Ontario, although a big blip at this time, I don't think is a big thing for any of these larger corporations. They see the market in California as much larger. A four-million purchase here? Sorry, "Just buy what we have. We know what we're doing. Thank you very much. Send us your money."

The Chair: Very efficiently, Mr. Leal.

Mr. Leal: Thank you very much, Mr. Zuuring, for your presentation. You spent a lot of detailed time—I appreciate it—on smart meters. The other half of the bill is conservation. Your thoughts on conservation, sir?

Mr. Zuuring: I'm all for it. I think you've got to put the tools in the hands of people to make the decisions. If you don't give them the tools, then you won't get it.

The Chair: Thanks very much, Mr. Zuuring, on behalf of Aztech Associates.

STRATACON INC.

The Chair: I would invite now our next presenters, Mr. Mills and Mr. Brown, on behalf of Stratacon. The clerk has already distributed your written materials, and I would invite you to please take a seat. As you've probably seen from protocol, you have 20 minutes in which to make your deputation; time remaining will be distributed

evenly amongst the parties for questions and comments. Please begin.

Mr. Peter Mills: Thank you very much. My name is Peter Mills, with Stratacon. We're a sub-metering and billing services provider in the province and across Canada. I'd like to thank you for the opportunity to present today.

What I'd like to go over is really the existing stock of high-rise buildings in the province. There are roughly about 2.6 million rental apartment suites, condominium suites and social housing suites. Of those 2.6 million suites, only about 15% of the suites actually receive a monthly electricity bill. A huge portion of residents in the province do receive a bill every month, hundreds of thousands of residents, either from sub-metering companies like ourselves or from existing LDCs. What we'd like to focus on is the other 85% of the existing apartment and condominium stock in the province that currently has essentially all of the electricity costs hidden in rent and in the common element fees. Those residents currently have no incentive to conserve; they have no idea how much electricity they use on a monthly basis. By sub-metering these units, there is a huge potential demand-reduction opportunity that the province can obtain, roughly about 530 megawatts of power reduction in the province, and 210 megawatts of that 530 would occur directly in the city of Toronto.

If you can turn your attention to the next chart, essentially in multi-residential buildings there are three types of users, and this really details the reasons why sub-metering makes a lot of sense: 10% of the residents in a typical building are using 25% of the electricity, and the low users, which represents about 70% of the residents, are only using about half of the electricity. So essentially, 70% of these low users in the building are subsidizing the very high 10% of the residents.

1530

Mr. Paul Brown: This breakout is typical of almost every building we've ever done, whether it's a high-income building or what you might call a low-income building. It's amazing how consistent the spread is, both in the province and other jurisdictions as well.

Mr. Mills: On the next sheet there is a pie graph that details—this is the exact consumption of a rental building that we're doing in Toronto, where each resident is being metered. During the month of January, the highest user was using about \$60 in electricity that particular month, some of the lowest users were under \$2, with the average user probably around \$15. This is an actual building in Toronto, with actual results, and it really shows the discrepancies that are occurring in terms of electricity use in multi-residential buildings.

Mr. Brown: This is in a gas-heated building, so it shows you that there are huge differences between all the different suites in a typical building. This is very typical; we have more information that we'll provide as well if you want.

Mr. Mills: Sub-metering is fairly straightforward, fairly simple to execute; it can be done very quickly and

it's reasonably inexpensive. Most apartment or high-rise buildings currently have one bulk meter. The building owner or condominium is billed by the LDC, and they then in turn pay the utility for that bulk meter cost. The apartments have no idea what their in-suite electricity costs are. We place our meters after the LDC bulk meter and measure the residents' consumption on a month-by-month basis and then provide billing and collection services to those residents in the building. All of our meters are smart meters. I dare say, in terms of smart meter installations, our company has installed over 5,000 smart meters in the province of Ontario. We're currently reading those meters, collecting, in some cases, five-minute interval data, in most cases hourly data, on all of those meters, and performing billing services based on hourly usage. All of the equipment we install is approved by Measurement Canada for revenue billing. Essentially, we sign long-term agreements with the building owner and the condominium corporations in return for the supplying and installing of the hardware and the billing and collection services.

Typical results: In a gas-heated building, we're saving anywhere between 15% and 20% of the bulk electricity costs; and in electrically heated buildings, the consumption drops by 20% to 30%, and that's strictly because residents now are getting information on a monthly basis through an electricity bill and changing their behaviour accordingly.

The next chart just shows the flow of services. The utility continues to have a relationship with the building and continues to have a bulk meter there; the building continues to purchase power on a bulk basis. All we are doing is allocating that bulk bill on a monthly basis to the residents. So the residents get a flow-through of the bulk purchase rates from the building; we flow that through directly to the residents. Stratacon bills the residents, collects from the residents and remits the energy collections from the residents back to the property manager, who in turn continues to pay the bulk meter bill.

Mr. Brown: The advantage of the sub-metering, as opposed to typical residential direct metering, is that the bulk rate is lower than typical residential rates—it's a commercial rate—and that lower rate is passed on to the individual residents in the suites.

Mr. Mills: The next slide just shows a picture of a typical smart meter for multi-residential applications. Technology has advanced an extreme amount in the last few years. This particular smart-metering technology that we're using now is about the size of a clipboard. It's about one inch thick. It allows us to provide smart metering to 20 suites. It's made in Ontario, manufactured by Triacta, just outside of Ottawa. Again, it's Measurement Canada-approved for revenue billing, just like all the meters for single-family homes.

Mr. Brown: In each one of those panels are 20 smart meters. If you were to open that box that we have a picture of, there are 20 meters, and they look like typical chips. Then that box is installed, and we'll explain next, in the utility closet on each floor or every other floor, so

there is no need to access individual suites. There is no need to rewire the building. We simply go to the utility closet, install this panel on each floor or every other floor, connect it to the existing box and we're gone. It usually takes less than two days; sometimes a day.

Mr. Mills: We follow a fairly systematic approach to the implementation of sub-metering. We carry on energy audits at the buildings to determine how much energy has been used in-suite historically, and then provide a calculation so that the residents in the building will receive either a monthly reduction in their rent or a reduction in the common element fees if it were to be a condominium. That rent reduction and fee reduction then take place, we commence billing and consumers then move from a situation where they've had no information about their electricity to complete information about their electricity usage.

We charge our administration fees and capital fees directly on the residents' bills. Most of our fees are typically 30% to 40% lower than what an LDC would charge for similar services, so we're extremely efficient in terms of how we provide our services. Again, the relationship between the utility and the bulk meter and the building owner is maintained. All of our billing and collection services are consistent with OEB procedures and precedents. In fact, we have submitted a code of conduct for the industry to various officials, as well as to the OEB for their oversight, and have been encouraging them to look at some further regulations in relation to sub-metering in the province.

Mr. Brown: We've recommended a number of measures to ensure there's adequate consumer protection for sub-metering should it go forward. There are existing procedures in place at the OEB to ensure that consumers are adequately protected. There's a code of conduct that has been developed. Fortunately, that's all in place at the OEB already, but it needs to be looked at in terms of sub-metering, and that's a fairly straightforward process.

Mr. Mills: In terms of barriers to achieving some very significant conservation through sub-metering, the Tenant Protection Act currently requires that each resident has to give consent to the rent reduction to become a bill payer. We've completed many thousands of retrofits across the province, and in every single case have had to go and get resident consent. It's a very difficult and time-consuming process and really does need to be removed from the Taxpayer Protection Act so that landlords can unilaterally implement sub-metering and complete an entire building at once, not half the building or a quarter of the building.

Mr. Brown: The current provisions simply are an inhibition to sub-metering and reducing energy consumption. It also adds tremendous cost to the process that somebody is ultimately paying for. That's why we've recommended that if the province is serious about conservation and allocating costs fairly, those provisions have to be removed. Of course, in return, the rent or the common area expenses are reduced accordingly. That has to be—and we've recommended to the government—fair

and it has to be clear so that everybody understands the amount of rent they're getting. We do that in all the cases we do now. We do an energy audit prior to conversion and then the tenant or the condominium resident gets a reduction in their common area expenses or their rent.

Mr. Mills: Similarly, the Condominium Act, and most declarations of all individual condominium corporations in the province, requires currently about an 80% positive consent vote from all unit owners in a condominium corporation. It's very difficult to get 80% of the owners to vote on anything at all, let alone get a positive consent vote. That particular requirement really needs to be removed so that the implementation can be done smoothly—again, with less cost. We recommend that these get removed, as well as looking at mandating of sub-metering in all multi-residential buildings, along with the smart metering time frame as well.

I guess the reasons why smart sub-metering in condos—obviously the biggest impact is 530 megawatts of demand reduction in the province. It's a significant contribution to the province's goals in terms of conservation. It will put into the hands of millions of residents the information they need to become smarter in terms of the way they use electricity. They don't get any of that information right now.

The current system is very wasteful. It's not fair. Low users are subsidizing high users in apartment buildings and condominiums. It's really the only sector in the province where the users have no relationship with their consumption and their cost. If they use a lot, they still essentially are paying the same in their rent or common elements fee. If they use very little, they're still paying the same as their neighbour in their common elements fees and rents.

Most residents want to participate in conservation in the province, and without being metered, they can't participate. They don't understand the impact of their changes in behaviour or their purchases of hardware to make them more efficient. So without metering in place first, it's going to be very difficult for all of those residents to participate, which they want to do.

Again, just the demand reduction: certainly, in the province, 530 megawatts; and in Toronto, 210 megawatts. It can be done very quickly as a very beneficial conservation opportunity.

That's the end of our presentation. We would take any questions at this time.

1540

The Chair: Thank you, gentlemen. We'll begin with the NDP. Mr. Hampton, under two minutes each, please.

Mr. Hampton: The problem with apartments—I guess, to a lesser degree, with condominiums—is that, to a large degree, the real energy conservation in any building arises from having energy-efficient appliances, having an energy-efficient building to begin with—windows, insulation etc.

When I look at the information from California, for example, out of 12,000 megawatts saved, they ascribe about 2,000 megawatts to appliance standards, to having

energy-efficient appliances. They ascribe about 4,000 megawatts to building codes. Then they ascribe about another 6,000 megawatts to other efficiency measures, retrofitting buildings, demand-side management, and so on.

In apartment buildings, the tenant has very little control over those things. If the building is badly insulated, the tenant has no control over that. If it's got single-pane windows that were installed in the 1960s or 1970s, they've got no control over that. If the owner of the apartment building puts in the appliances, they have no control over the appliances. I can see where sub-metering in an apartment building and my having a much higher electricity bill might get me to turn off my air conditioner and sweat in the dark, but again, looking at the California example, they're saying that the real opportunities, the real meat in the sandwich, is appliances, building codes and then retrofits of buildings, and those kinds of things.

Mr. Brown: If I can, part of what you say is true; part is not accurate. The savings we've seen in every building we've sub-metered, whether it be electrically heated or gas-heated, have all occurred immediately based on changes in behaviour. There has been no change in capital infrastructure, no change in energy consumption, appliances. All the change has happened, and we have and could provide you with lots of reports on individual buildings that would—

The Chair: I need to intervene there. We'll move to the government side.

Mr. Leal: I would appreciate seeing those reports. I think they would be handy.

Second, your presentation today certainly debunks some information we received earlier today. It was suggested that if we went into condominiums and apartments, a lot of rewiring would have to be done, a lot of sophisticated equipment would have to be employed. You're telling me today that with this little device right here, we can prevent a lot of that capital cost, and the red flags that were being put up—

Mr. Brown: Within three years, you can have the entire province sub-metered.

Mr. Leal: My colleague Kevin Flynn has a question.

Mr. Flynn: It seems to be saying that smart metering seems to be the way to go, and sub-metering would be the next logical step.

Mr. Brown: No; if you were to ask me the best way to conserve, sub-metering is the first logical step. Currently, apartments and condominiums have no metering.

Mr. Flynn: I'll buy that. I think I understand what you're saying. Is there any other jurisdiction that would be famous for sub-metering in North America?

Mr. Mills: Certainly in Europe, for example, Germany went through a mandate for sub-metering of high-rise rental and condominium properties, from 1979 to 1984. They completed 10 million suites in five years and achieved very similar results to what we're achieving here in the province. In terms of North America, there have been various mandates, but certainly not on a provincial scale.

The Chair: We'll move to the Tory side.

Mr. Yakabuski: I'm not aware, but you probably are: Even if a building is being built new today, is sub-metering mandatory?

Mr. Brown: No.

Mr. Yakabuski: That would certainly refute the argument of an old building or poor appliances or aged, inefficient appliances. If a building were being built today, it would be built with new appliances etc., and we're still not mandating sub-metering, so we're still opening the door to inequity in how that power in that building is being used.

Mr. Brown: Our company, Stratacon, has been in the business of supplying water management—in layman's terms, better-flushing toilets—for hundreds of thousands of suites, so we've been in those suites. Most suites have energy-efficient appliances. It's a bit of a mythology that they don't; most suites do. The reduction that we've seen all comes from changes in behaviour because people have to pay.

There is an issue that you might want to look at for those portions of the buildings that are electrically heated. That's where Mr. Hampton's point deserves some attention. In electrically heated buildings, there are issues in terms of windows and where they are in the building, north versus south. That portion of the building stock, which is not large, deserves some attention in terms of ensuring that there's fairness to residents. But for the vast bulk of gas-heated buildings, it's all behaviour.

The Chair: Thank you, Mr. Mills and Mr. Brown, on behalf of the committee for your deputation from Stratacon.

Mr. Leal: On a point of order, Mr. Chair: Could we ask our research officer, Mr. Richmond, to be in contact with these gentlemen? They seem to have a lot of data. I think it would be useful for our report.

The Chair: Your request has been noted and directed to legislative research.

TRIACTA POWER TECHNOLOGIES INC.

The Chair: I now invite our next presenters, from Triacta Power Technologies. Mr. Brennan, you may come forward. As you've seen, 20 minutes for your deputation; the time remaining, questions and comments distributed among the parties afterward. Your time begins now.

Mr. Bob Brennan: It's a pleasure to have an opportunity to speak today. You'll find my presentation to be brief. I'm looking forward to your questions at the end.

Triacta is a manufacturer, as you've seen already, of smart metering technology, particularly for high-density, multi-unit residential buildings.

Maybe to address a point that came up a few minutes ago, by way of background, there are about 1.5 million tenants in Ontario without meters at all. The point here is that there is a two-step benefit to sub-metering multi-tenants: (1) to meter them in the first place to curb poor

consumption behaviour; and (2) the benefits of smart metering on top of that.

Currently, as you heard earlier, costs are built into the rent and allocated without individual measurement. So indeed, the landlords, property owners and managers have no actual data—tenant by tenant, floor by floor—of the consumption in their building, regardless of consumption patterns of the individual on a like-for-like, floor by floor. Even those data are missing. There are other data to be provided to the industry as well.

Being a technical type, I went back through our database. Time over time, above one third of the tenants in a building are using half of the power. It's very consistent. Of these approximately 1.5 million tenants, about 60% are in the Toronto area.

1550

There are a number of studies which support sub-metering. On the behavioural impact, there is about a 20% reduction in consumption. Again, this is strictly because people are starting to acknowledge—to coin a phrase—that it's no longer a free bar at the wedding. People actually do react to getting the bill. With our technology, customers can go online and see their consumption immediately. They can see it in one-minute increments, if they so desire. Customers who are interested after they get their bills will certainly react to that.

One of the things we've also seen when we do an energy study in a building is that two thirds of the tenants are very keen to get their meters because they realize that they are now currently subsidizing the other one third in the building. That has rung true, both in apartments and condominiums.

My last point here in the background section is that the next benefit of smart metering these units is obviously for peak reduction. There are a number of studies available on the possible impact of smart metering. It could be up to 30% by a 50% reduction in peak.

What I did next was take a look at the total consumption impact that we project with the metering of tenants. We went back to our database. We have several thousand meter points in place in the province right now, and we took our measurements from August to just the end of last month. The example I've chosen to use is gas-heated stock, and I'll note that the average electrically-equipped building has about a 50% higher consumption per suite. However, in the gas buildings that we've done, the average tenant use was about 27 kilowatt hours a day. Conservatively speaking, I took not the 20% documented impact of metering but half of that. We could save 1.4 billion kilowatt hours in Ontario. To put a frame around that, that's about one quarter of the output of a reactor operating 365 days of the year, 24 hours a day. It's also about 5% of the annual coal generation in the province and about 12% of the gas generation in the province. Maybe to bring a finer point to it, about a billion of these kilowatt hours are in the Toronto area, so this is where the density is right now.

The next point I want to try to make is the impact on peak. Actually, I didn't take any calculations based on

time-of-day rates; this is strictly an analysis of a 10% reduction through the use of—it's roughly 300 watts per tenant. For those of us who have been upgrading our light bulbs, that's probably about three light bulbs that would have this impact. Again, because of the large number of units, this adds up significantly to about 450 megawatts in the province and, again, in the GTA it's about 270 megawatts of peak production. Given the concerns with transmission facilities, supply and demand at a macro level, just putting meters in in the first place has a significant impact both on demand and on consumption. Again, I'll note here that time-of-day pricing impacts have not been built into these models.

Lastly, I want to make note that there are a number of Ontario companies available with products now, not only ourselves. They are proven technologies, on the measurement, the networking, the back end and on the service offerings. A key point here is that because these are high-density meters into a high-density market, they actually deploy very quickly. With the government's target of 800,000 meter points in roughly the next year and a half, certainly a high percentage of that is available with the multi-tenant residential markets.

More importantly, and maybe in a broader sense, Ontario is developing a centre of expertise, if you like. Our company has been approached by other jurisdictions across Canada and around the world. The world is watching Ontario with our smart metering rollout and we're gaining quite a bit of attention for other markets as well.

To sum up, in a nutshell, what we're asking of the committee is a very clear mandate to property owners and condo boards to remove any of the obstacles in place to allow them to proceed. There's a double impact available here, both on metering and then the advantages of smart metering on top of that. Thank you. Any questions?

The Chair: Thank you very much. You've left a generous time for us to have questions. We'll start with the government side. You have about four minutes each.

Mr. Leal: Just quickly, and then Mr. Delaney and Mr. Flynn. Thank you very much for your presentation. My first question, and I suppose a comment, is that it looks like you've done a bit of a cost-benefit analysis on this smart metering issue.

Mr. Brennan: Certainly when you look at the impacts that can be attained in a high-density building, it's very quick. Again and again we see that one third of the consumers are using half the power, and that's taking out some of the outliers who, let's say, have other activities going on that add to that.

Mr. Leal: My next question is just going to your concluding statement, "A clear mandate to allow and encourage property owners and condo boards to implement smart metering" technology, and the three suggestions or priorities to do that.

Mr. Brennan: Anything that will remove a high-majority vote for the condo boards, I would reiterate that. On the multi-unit apartment buildings, changes to the Landlord and Tenant Act that would allow the landlords

to implement quickly. We do have a number of clients who have come to us and said, "This is all great, but the chances of me rolling this out quickly, given that I have to go through these steps, is quite tough."

Mr. Flynn: Just trying to follow through on the concept, in a sense you would have a private meter. Each individual unit would have a private meter.

Mr. Brennan: Just like in our homes.

Mr. Flynn: I notice that a previous company was doing a little bit of advertising for you. They've got a picture of one of your units in here. Who actually owns the Triacta unit after it's put into a building?

Mr. Brennan: In the model, it can be owned by the landlord. In this case, with the previous company, they own the hardware and they keep it up to date.

Mr. Flynn: They add something onto my fee as an individual tenant.

Mr. Brennan: They go through an analysis, a rate reduction, and then it's very much like we pay in our single-family homes. There's an administration fee.

Mr. Flynn: Is a contract entered into for a given period of time?

Mr. Brennan: With the landlord, yes.

Mr. Flynn: So a landlord would enter into a contract on my behalf as a tenant, under the—

Mr. Brennan: That's correct.

Mr. Delaney: A very interesting presentation. My question is this: What are the transaction costs that you add on per month to a typical unit? I'm wondering whether you could provide us—we don't need any personal information, obviously, as to the name of the owner of the building—with an analysis of what a resident's cost was before the sub-metering came in, what it was in a building after sub-metering, plus whatever monthly fees and other transaction costs you add on. Also, what does it cost you? What is the cost to your organization to generate an invoice?

Mr. Brennan: First of all, it depends on the model we are using to deliver our product to market. In some of the models, we sell hardware and the data collection service. In other models, we would lease the meter to a commercial entity, as another example. So it very much depends on the model.

If you look at where the costs exist, if you like, there is a cost, obviously, in the hardware itself and installation, and then there's a cost in the data collection fee, very much like meters for single-family homes. Then the generation of a bill is included in the administration fee.

The Chair: I'll need to intervene there. We'll move now to the Tory side.

Mr. Yakubski: Thank you very much for your presentation today, and thank you for the time you gave me earlier in the year to tour your facility and have a better look at your technology. I must say I was impressed, not only with the principle behind it but also the immediacy of information, being able to access it through the computer and everything. It is a very impressive system.

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I just wanted to point out maybe a little difference with Mr. Leal, where you guys have done a cost-benefit

analysis—he said “smart metering.” You guys have done a cost-benefit analysis of sub-metering, unlike the government, which has not done very much cost-benefit analysis of smart metering at all. That’s just for the record, Mr. Chair.

Anyway, I guess what we’re looking at here is, it’s part of a conservation act and part of trying to conserve energy. We’ve had previous submitters who have had significant opposition to what you’re doing, which is sub-metering, or what your plan is to get apartments sub-metered. I guess one of their arguments was what Mr. Hampton talked about: The tenant hasn’t got much control over the electricity use. What Stratacon said today is that that’s not quite the case. Would you concur?

Mr. Brennan: In a building with the same layout, the same type of apartments, you will often find two tenants side by side with the same equipment with radically different consumption patterns. It’s purely personal habits that are driving this. What we have seen is, people do react to a bill. The other side of that is, by our counts, two thirds of the users are quite conscious of their consumption, and yet they’re currently being penalized for those who are not.

Mr. Yakabuski: There’s no question that, on principle, I think most people would agree that if you’re using something, your neighbour shouldn’t be the one paying for it if you’re exactly in the same basic circumstances. Thank you.

The Chair: The remaining time is yielded to you, Mr. Hampton.

Mr. Hampton: I wonder if you could tell me, since you’ve looked at some of these things: What would be the major electricity use in the apartment buildings that you’ve been sub-metering?

Mr. Brennan: It’s usually heating, air conditioning, lighting. If there’s individual heating or cooking—some people tend to use their cooking utensils or cooking equipment for additional heating as well. We see this as we actually take the measurements.

To be fair, with landlords who are looking at places to save, it’s very hard for them to target an area of saving when you can have two apartments side by side on the same floor, on the same side of the building and have 100% difference in their consumption. Landlords are looking for assistance. They will react to a tenant coming and saying, “Hey, my bill just went up 30% because I’m getting a bill now.” There’s opportunity there for that data to help.

Mr. Hampton: So when you say “heating”—electric heat, then?

Mr. Brennan: No; what I’m saying is that people have used additional heaters in their apartments, extra air conditioning, and right now there’s no way of catching them.

Mr. Hampton: So, electric heat, in addition to whatever the heating system may be. Additional heating, air conditioning—and what was the third?

Mr. Brennan: Additional lighting.

Mr. Hampton: Do you sort out lights and appliances?

Mr. Brennan: Because we can actually measure in very fine granularity and because we have access, the customers, back to our database and our knowledge base, we can show them the patterns of use and highlight to them that this is likely heating or lighting or air conditioning cycles. It is that fine in measurement.

Mr. Hampton: So if I take what you’ve given me here, the target, then, would be heating and air conditioning for the most part?

Mr. Brennan: A target for retrofits? Oh, of people reacting—I would say that most people will, first of all, realize how much they’re using and just get more conscious about it. It doesn’t take a large impact, in that large a stock, to have a pretty significant impact. Most users will get a little more conscious about their lighting, about when they’re running their appliances and how long they’re running them. Things that we’re doing in single-family homes have never translated to the apartments, because they’re not paying for them.

Mr. Hampton: What strikes me is that the Ontario Power Authority, in their prediction, ascribe to smart meters about a 500-megawatt saving—

Mr. Brennan: At a provincial level.

Mr. Hampton: —at a provincial level. You’re saying that just in terms of apartment buildings, by proceeding to sub-metering, you think you could achieve 500 megawatts.

Mr. Brennan: Bear in mind that, to my knowledge, the estimates by the Ontario Power Authority did not assume any impact to multi-tenant buildings.

Mr. Hampton: No sub-metering?

Mr. Brennan: Correct.

Mr. Hampton: That’s where you see the difference?

Mr. Brennan: Absolutely.

Mr. Hampton: They see smart meters adding 500 megawatts across the province. You see an additional 500 megawatts from sub-metering.

Mr. Brennan: Correct; again, most of it in the GTA.

Mr. Hampton: One of the issues that has been raised a lot over the last couple of days—and I’d appreciate your views on this—is that a lot of tenants are saying, “Look, we have no control over the energy efficiency of the apartment. The landlord can get the cheapest appliances, which use a lot of electricity. The landlord can refuse to retrofit and continue to have windows that are leaky etc.”

Mr. Brennan: If you project ahead in time a little bit, when everybody has their smart meter, they can ask what the power use was in that unit for the last 18 months. Right now, there is no way of knowing, when you’re going into a unit, what’s being built into your rent. So, while I agree that there are opportunities for retrofit, I would say that most landlords would look at it and target it from that top 30% first. Behavioural changes are probably going to have the largest impact on that. Then, indeed, if there’s old equipment or faulty equipment, they’ll have the data to make changes.

The Chair: Thank you, Mr. Brennan, for your deputation on behalf of Triacta Power.

We'll now invite our final presenters of the day—two Toronto committee hearings—

Mr. Delaney: On a point of order, Chair: A request for legislative research. We've had a number of very interesting deputations from not merely tenants' groups but from companies that provide sub-metering. I'm wondering whether or not we could ask legislative research to contact some of the organizations that have given deputations here and establish, on a common basis, what some of the costs for providing the service are and what some of the savings that they've incurred are, and see whether or not we have a clear trend.

The Chair: Your request has been noted. I believe legislative research is in fact already on the case.

ONTARIO ENERGY ASSOCIATION

The Chair: We'll now invite Mr. Pospisil—have I got that correct?

Mr. Shane Pospisil: That's good. Shane Pospisil.

The Chair: And Mr. Busaan and Mr. Robinson, on behalf of the Ontario Energy Association. Gentlemen, you have 20 minutes, as you've seen. Please begin.

Mr. Pospisil: Thank you very much. Just a quick comment as well, on the information side: We've provided two slide decks today, one I'm going to speak to, and the second one a presentation at a round table session that I participated in in Barcelona recently. There were 1,400 participants from jurisdictions that have implemented smart meters technology—the doers in this area. We're still talking about it. There are all kinds of papers that were released at that conference.

Mr. Hampton, you talked about some of the social policy impacts on multi-residential units. There were all kinds of papers presented in that area, looking at demand sensitivities and elasticities, depending on your price spread between peak and off-peak, and what we can expect in terms of impacts.

We can certainly do some of our in-province research, but there's a lot of information to be gathered by those progressive jurisdictions that have gone before us. I will get the clerk information on all the papers that were presented. You may well find some of those papers quite interesting.

Just a general comment as I go through the first slide: I'm not going to delve into the details on specific technology platforms and what have you. A number of our members have been in front of you in the last couple of days, and you'll hear a lot from our members in the days ahead. We're going to step back and offer some comments and perspectives more at the policy level and the strategy level.

We're definitely not here today to lobby or advocate for any specific changes to the proposed legislation. We see it as another important piece in advancing and promoting and building a culture of conservation in Ontario. We also recognize that, as is often said, the devil is in the details, and the regulations are yet to come, both on smart metering and some of the conservation initiatives that are

outlined by the government in the legislation. So from our perspective, it's very difficult to comment with any fair level of specificity at this point in time.

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Just a quick comment on who the Ontario Energy Association is: We have 170 members representing both the electricity and gas sectors in the province. Our 170 members represent about \$34 billion in annual market revenues in the province each year and employ about 32,000 folks across the province, the men and women who really keep the lights on, the front line in servicing the consumers here in Ontario. It's very important to remember that when we talk about smart meters and conservation initiatives. These are the folks who make it happen. A lot of the comments I'm going to raise here in the next few minutes are reflective of a planning retreat we had in early January, talking about where we are on the conservation front and where we need to go; so some consensus points coming up later.

Our members cut across all elements, and you're going to hear from a lot of them over the next few sessions. We have the consulting services companies. These are the people who really drive innovation. They come up with solutions, not 101 reasons why something can't happen: "How are you going to make something work?" The equipment suppliers are here and they're well represented within our membership. The utilities, both gas and electric: On the electric side, as I think everyone here is aware, our members have been quite actively involved, have spent \$160 million on various energy conservation measures across Ontario in recent months, and there are still many planned and proposed. Retailers and marketers: a group that provides price security to a lot of consumers who are looking for that as part of their choice option. Again, there are a number of other ancillary services that look at in-house conservation and energy-efficiency initiatives.

One of the key things coming out of the planning session, and something all our members embrace as we go forward in Ontario with some of the energy challenges we have, is the notion that informed consumers are empowered consumers. We need to ensure that Ontario consumers, whether they're residential, small business or industrial, have information. I can tell you that, going out and doing a lot of community service sessions with seniors' groups and what have you, I think people want to contribute, want to help out. They just don't know what to do. So information is really critical.

The next component is the tools, and of course the smart meters fit into that category. If you're going to act, you need the tools to be able to measure when you're using electricity, how much it costs at that point in time, and of course, together with tools, you need the pricing incentives. You can't just have one price for the whole day. You need smart pricing: different prices reflecting peak, mid-peak, and off-peak pricing scenarios.

Fourth, we would argue that you also need choices. There may well be some consumers who don't want to put up with that volatility, who don't want to be monitor-

ing their smart meter on a regular basis, who just want to lock into a long-term, three- or five-year contract and be able to budget accordingly, knowing what the overall price is going to be. So that's another option of consumer choice that we feel it is very important to keep in the mix.

Turning to the page "Conservation Leadership Act": a few general comments on Bill 21 and what the government is doing in terms of getting its own house in order, and the bold target they've set for a 10% reduction in their own in-house electricity usage—certainly a very bold commitment, one that we believe shows leadership in the conservation area. It's not just government talking and lecturing; they're actually setting a larger target than they have for the economy as a whole, and I think that's very important. I think the notion, as well, of looking at energy efficiency and conservation and a lot of their capital projects going forward is critical. Having spent many years in government, I can tell you that a lot of the capital projects I saw in the Ministry of Finance didn't have that element reflected, and I think to have that come up now as these projects are being evaluated is very important.

The big issue on this page is the comment I make here: "Critically important to remove barriers and not create new regulatory burdens—learn lessons from the supply side!" One of the things coming out of our planning retreat back in January was the notion that Ontario's regulatory environment, its regulatory framework, is burdensome in this province, whether we're talking about environmental assessment on the supply side, about local development approval processes, about leave-to-construct applications at the Ontario Energy Board, about removing impediments in the building code to allow us to do a lot more efficient things in the conservation area. There's absolutely no doubt about it.

Right now, with our association, we're starting to benchmark Ontario's regulatory processes and systems relative to other progressive jurisdictions in North America: British Columbia and Quebec; we're looking at Minnesota and some of the more progressive US jurisdictions. The regulatory frameworks we have are not exactly the most streamlined in terms of achieving the objectives. I think we'd all agree we want to see changes to the building code, being one that came up earlier; again, accelerating the development of some of these clean energy projects on the supply side as well. This was the number one issue flagged by our membership at the planning retreat, and over the next six to eight months we're looking at developing a regulatory cost index that will show us where we stand relative to other jurisdictions, not only in Canada but in North America. So just put that on your collective radar screens.

The other comment I would make is that, when we look at energy prices in Ontario now, the sense I get as I go around the province and meet with various groups is that there's a sense that this is an issue that is unique to Ontario, that we're an island unto ourselves and these increasing energy prices are something only we're suffering with. The reality is that all industrial juris-

dictions, all jurisdictions in North America, are seeing crude oil prices go up, have seen the recent increases in natural gas prices, are seeing increases in electricity prices. In Ontario, the big challenge we face right now is our ability to really innovate, adapt and reposition ourselves within a higher-cost energy environment. We can sit back and collectively take approaches that delay or frustrate adjustment, or we can look at how we facilitate adjustments to the new energy cost environment. With regard to the smart meter, we see it as a tool to facilitate adjustment in that it gives consumers the tools they need to better manage their energy bills. So in that sense, we're very supportive of the initiative.

A few general comments on smart meters: I've circulated the slide deck that I used at the round table in Barcelona. We actually discussed that slide deck. Probably we spent three hours on our slide deck alone, and then we looked at a presentation from Germany and one from Italy as well. So it was a very interesting session. Unfortunately, there are a bunch of bullets there which probably don't give you a lot of the context you need.

As I mentioned, we're very supportive of the smart meters initiative in that it provides consumers with the tools they need, and, combined with the price differentials between peak, mid-peak and off-peak, there should be an incentive structure there that incents people to shift load to off-peak periods and also to conserve.

The one area where we're very sensitive, and I think Mr. Hampton raised this during earlier questions, is to those who are on fixed incomes or lower incomes. There could potentially be some pressures there. Some of the accommodations these folks live in may have electric heating, not be the most insulated buildings, have appliances that aren't exactly the most efficient. As we go forward, we need to be very cognizant of that. Getting back to the conference in Europe, it was very evident in what the Germans, Austrians and Italians had done that they hadn't overlooked those folks who are in those categories and are struggling to pay some of their bills in spite of the fact that they have this new technology, and there were assistance programs put in place to help them manage.

Overall, looking at the government's agenda on the conservation/energy efficiency side, I think it's safe to say that our membership would give the government full marks for acknowledging that we face a very significant supply-demand situation right now in Ontario and will be facing that for years to come. They've acknowledged the issue, they've developed an action plan and they are implementing that action plan, smart meters being one of the items, and how government gets its own house in order in terms of energy efficiency, conservation and providing incentives for others to get on the bandwagon as well.

The association often disagrees with the government. There may well be specific issues where we have disagreements or nuances in terms of how something is being implemented. As you might expect, I have a very diverse membership. But overall, we're quite encouraged

that the government has an action plan. They're very open to consulting on the action plan and listening to other perspectives and views. I think we find that quite encouraging.

As I mentioned up front with regard to Bill 21, it's very difficult to comment given that the regulations aren't on the table right now. As a framework piece, I think it's quite encouraging, but we're actively looking forward to seeing the regulations as they come out with regard to the smart meters initiative, fleshing out a little more elements—the conservation elements as well. We would provide further input and details at that time.

With that, I think we could probably open things up for questions.

The Chair: Thank you, gentlemen. We'll begin with the Tory side. Mr. Yakabuski, about three minutes.

Mr. Yakabuski: Thank you very much for coming today. You commented that you were very much in favour of the smart meter initiative because you felt it was going to give consumers that information, but as we know today, we really don't know what kind of information it's going to offer consumers. It could be very broad or it could be very specific, but no decisions have been made on what kind of technology and information the consumer is going to get. So I think we may be a little ahead of ourselves on that.

1620

Mr. Pospisil: Just a general comment there: The draft specs have been provided to the LDC committee. I think they're posted on the website as well. They're generally consistent with what we were expecting. Again, it's a base platform technology, which should help keep the costs down. For those consumers who would be looking for some bells and whistles, they'll have an opportunity to contract for that. For those consumers who are just looking for a basic technology platform, they'll have that. That's what the draft package conveys right now.

In terms of your comment, though, that there are a lot of details that remain to be sorted through, that is right on. Dataco, the central data agency—how that works, the costs associated with that. Obviously, a big issue for a lot of our members as well is how the pieces fit together. And the timing for getting those pieces to fit together is very critical as well.

Mr. Yakabuski: You also mentioned the German technology that you were lauding. I find it peculiar sometimes that we always talk in this country about, "Look at what the Germans are doing," but when we look at what the Germans are doing with regard to clean-coal technology, this government all of a sudden goes into—the ostrich comes out, down goes the head and we don't even want to talk about it.

You are also lauding the government for its goal of conservation, but of course, it's just a goal until it actually bears some fruit. That's a little farther down the road; that's 2010. But every day we're hearing more and more experts in the field saying, "We told you so. You can't do this—this timetable, this commitment to shut down coal by 2007," and hence revised to 2009 for

Nanticoke. If they're as good at forecasting their conservation as they are about coal shutdown, do you still have the same faith?

Mr. Pospisil: I'm here today as well to talk about Bill 21, so I won't comment on the government's coal phase-out commitments. But there is no doubt that the 5% peak electricity demand commitment the government has made is a bold commitment. When you look at peak—

The Chair: I'll need to intervene there, Mr. Pospisil, and move to the NDP side. Mr. Hampton, three minutes.

Mr. Hampton: On Friday, we heard from the Pembina Institute. They made a couple of very specific recommendations. One of the things they said is that smart-metering would allow several corporate entities perhaps—or one big corporate entity called the smart metering entity—all kinds of private information. They'd be able to tell when somebody left their home in the morning and when they came home in the afternoon, when they went to bed, when their home was vacant. They made the recommendation that the smart metering entity be a designated institution for the purposes of the Freedom of Information and Protection of Privacy Act, because this information, should it be used improperly or negligently, could be quite damaging. Would you support that?

Mr. Pospisil: The issue you've raised in terms of personal security—there's no doubt that a very sophisticated smart-metering technology platform can provide all kinds of additional services as well: home security; it could look at water metering. The platform we're seeing now is actually very basic, and there's a one-way element to it now rather than the two-way technology interchange. So I think that really mitigates a lot of the risks that you're alluding to. Having said that, the issues you raise are very important, and in the rollout of the smart meters technology they certainly need to be fully considered in the context of some of our broader public policy goals.

Mr. Hampton: The other point that they made is that indeed the whole smart metering initiative creates a platform for the marketing of all kinds of services, that in effect this is just the first very narrow sliver, that this could turn into a very large marketing opportunity with large amounts of money involved. So the recommendation they made is that the smart metering entity—as a body that's going to be created by public legislation and will have a lot of power, or at least it looks as if it will have a lot of power—should be subject to auditing by the Provincial Auditor. We're talking here about a lot of powers, public powers—powers that could infringe on people's privacy—and substantial amounts of money.

The Chair: I need to intervene there, Mr. Hampton; my apologies. We'll go now to the government side.

Mr. Leal: Thank you very much for the presentation. You said you worked for the provincial government in the Ministry of Finance. What years were those?

Mr. Pospisil: Finance would have been 1999 and 2000, and the Ministry of Energy, 2002 through 2005.

Mr. Leal: My next question: You indicate you attended a rather large conference in Barcelona. Is it safe

to say—and I'll get you to comment—that a forward-looking economy, like I think Ontario is a forward-looking economy, would bring in this kind of smart metering initiative and a conservation program?

Mr. Pospisil: The sense amongst those in attendance was that it's about time that a North American jurisdiction is actually taking such a bold move in terms of empowering consumers. Most European countries have been moving in this direction for a long time, empowering consumers, and we're really the first to roll it out on a large scale.

Mr. Leal: So they were somewhat struck that nobody in North America has really moved aggressively down this road? Ontario's going to be the groundbreaking jurisdiction?

Mr. Pospisil: Correct. There were concurrent sessions. When I spoke, there were over 800 people in the room, so there was a lot of interest in what we were doing.

Mr. Leal: I think Ms. Mossop may have a question too.

Ms. Mossop: Just moving over to the conservation angle of this: We've talked a number of times about the culture of waste in our society as opposed to a culture of conservation, on this side of the Atlantic anyway, and the work that needs to be done. While the 5% is bold, would you say it's doable?

Mr. Pospisil: Yes.

Ms. Mossop: Would the education components that we're planning and the request that we have all oars in on this, on using our resources responsibly, be effective tools?

Mr. Pospisil: Yes. Again, in this area, there's no one magic silver bullet. It's going to require education and public awareness and continuing to reinforce that. It's going to involve activities that really underscore best practices in our industrial sector. Smart meters and price spreads there are very important, because with demand elasticity you need a spread to get a reaction from consumers. If there is no spread or it's too narrow, most people won't pay too much attention. The OEB draft pricing numbers that were put out earlier this year look pretty good from my perspective, from a demand elasticity perspective, and that was the sense at the European conference as well.

Ms. Mossop: Excellent. Thank you very much.

The Chair: Thank you very much, Mr. Leal and Ms. Mossop. I'd like to thank the gentlemen from the Ontario Energy Association, Mr. Pospisil, Mr. Busaan and Mr. Robinson.

I remind members of the committee that we are meeting tomorrow morning at 9:30 a.m. for our chartered bus leaving for Simcoe for day three of these hearings. Just to remind you, it's at the Best Western Little River Inn, in Simcoe, Ontario. Seeing no further business, this committee stands adjourned till tomorrow.

The committee adjourned at 1629.

Continued from overleaf

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Legislative Assembly of Ontario

Second Session, 38th Parliament

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Deuxième session, 38^e législature

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Tuesday 7 February 2006

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Mardi 7 février 2006

**Standing committee on
justice policy**

Energy Conservation
Responsibility
Act, 2006

**Comité permanent
de la justice**

Loi de 2006 sur la responsabilité
en matière de conservation
de l'énergie



Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Tuesday 7 February 2006

Mardi 7 février 2006

The committee met at 1330 in the Best Western Little River Inn, Simcoe.

ENERGY CONSERVATION
RESPONSIBILITY
ACT, 2006LOI DE 2006 SUR LA RESPONSABILITÉ
EN MATIÈRE DE CONSERVATION
DE L'ÉNERGIE

Consideration of Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act / Projet de loi 21, Loi édictant la Loi de 2005 sur le leadership en matière de conservation de l'énergie et apportant des modifications à la Loi de 1998 sur l'électricité, à la Loi de 1998 sur la Commission de l'énergie de l'Ontario et à la Loi sur les offices de protection de la nature.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I'd like to call this meeting to order. This is day 3 of our committee hearings for justice policy for the Legislature of Ontario, to deliberate Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act.

Before beginning, I'd like to introduce to the audience the members of the committee. My name is Shafiq Qaadri, MPP for Etobicoke North in Toronto. To my left we have members of the official opposition: Mr. Toby Barrett, the MPP for Haldimand-Norfolk-Brant, joined by his colleague Mr. John Yakabuski, from Renfrew-Nipissing-Pembroke. In the far corner we have Mr. Howard Hampton, MPP for Kenora-Rainy River and leader of the NDP. On this side, the government side, we have Ms. Jennifer Mossop of Stoney Creek, Mr. Kevin Flynn of Oakville, Mr. Jeff Leal of Peterborough, Mr. Bob Delaney of Mississauga West and Mr. Jim Brownell of Stormont-Dundas-Charlottenburgh.

Just to inform everyone about the protocol, presenters, once they're called forward, will be invited to present their remarks for 20 minutes. If there's any time remaining—for example, let's say they spend 15 minutes in that presentation—the remaining time will be distributed evenly among the parties for questions and comments. If you have any written materials to distribute to the members, feel free to offer them to us and I'll have the clerk

distribute them. I would also encourage everyone to understand that these are recorded proceedings. They will become part of the permanent record of the Legislature of Ontario. As well, as you're speaking, especially if there's a group of individuals testifying, please identify yourselves by name for the purposes of Hansard recording.

HALDIMAND FEDERATION OF
AGRICULTURE

The Chair: I'd now like to bring forth our first presenter, Mr. Frank Sommer, who is treasurer of the Haldimand Federation of Agriculture. Mr. Sommer, please have a seat. Just to remind you, you'll have 20 minutes in which to make your presentation. As I said, time remaining afterwards will be distributed evenly among the parties for questions and comments. Sir, would you please begin now.

Mr. Frank Sommer: Thank you, Mr. Chair. My name is Frank Sommer and I represent the Haldimand Federation of Agriculture.

The Chair: Please have a seat. It's not the Legislature; you're welcome to sit.

Mr. Sommer: Thank you.

Members of Parliament, staff, guests and fellow citizens, I'm happy to represent the federation of agriculture here this afternoon. You may find it somewhat strange that the treasurer of the organization should represent the organization, but the nature of farming being what it is these days, the farmers who are left in Haldimand county are either working full-time or part-time off the farm in order to make ends meet. Being a retired farmer, I still am involved in the farm organization and serve as treasurer and director on the board.

Our federation has served Haldimand farmers for over 60 years. We are a general farm organization that represents farm families and the agricultural interests in the county. Our main purpose is to have a positive influence on the welfare and the prosperity of individual farmers and of the industry, and it's our purpose to inform the general public of the importance of farming to the local economy. Many of our farm organizations have their roots in the federation of agriculture.

It may seem somewhat ironic that we are here addressing the justice committee of the Legislature, because justice is what a lot of our farmers are concerned about. To a large extent, farmers in Canada and particu-

larly in Ontario have felt for years that we're disadvantaged when competing on the world scene. While having to compete globally, our farmers have had to compete against the treasuries of the European Union and the American treasury, and as well we have had to deal with distorting provincial policies that can be in some cases much more favourable, such as the case with the policies in the province of Quebec.

Farm commodities, like energy, are so politicized on the worldwide scale that for the layman it's sometimes difficult to sort fact from hearsay, truth from speculation, and yes, it's even hard to sort out the difference between government policy and political posturing at times.

Sure, we were aware that there were increasing costs. The increasing costs of energy have impacted the farming community the same as everybody else, and we sure appreciate the Ontario government's attempts to come to grips with the pressures that are out there, particularly the looming shortage of electric power. Lately, we've also become aware of the looming shortage of natural gas.

We really didn't become aware of the current Bill 21 until just the last week or so, when we found out that the province is again trying to switch to generate electricity from natural gas. We applaud the intent of Bill 21 in establishing a framework for future energy conservation, and we welcome the opportunity to comment. The aims of the bill can hardly be disputed: energy conservation, the potential for benefits by the proposed use of smart metering, the ability of the conservation authorities to exploit hydroelectric resources—all things that I think few of us can argue with as being beneficial.

In schedule A, it appears as if the intent is to institute preferential treatment in law for certain undefined energy conservation measures. It appears to open the door to energy audits when real property changes hands. It seems like it's sort of an approach of energy conservation by regulation, if we look at the proposed annual conservation plans for public utilities, for instance; compliance orders, even enforcement officers.

In schedule B, we get a glimpse of what the government's intent is for the smart metering entity. It seems to be the creation of a super-agency to plan, implement, oversee, administer and deliver smart metering, in addition to having the exclusive right to collect and store consumer information and to own and lease databases—in other words, a smorgasbord of options for the structure of the entity are permitted, as well as a large range of activities with an unprecedented range of powers.

Schedule C seems to create a framework by which the Ontario Energy Board can make the whole process legal, with licensing agreements, conditions of agreements, cost allocation etc.

While we have neither the technical nor the legal expertise to comment on the detailed provisions of Bill 21, we are concerned that the proposed measures, when fully implemented, will in themselves be very costly. We're not convinced that we, as the province of Ontario, have arrived at the point where these draconian measures

are necessary at this point in time. We're not convinced that all opportunities for incentives and persuasions for energy conservation have been fully explored to fully surrender to the intrusive regulatory approach being proposed in Bill 21.

1340

From the description in Bill 21, it is difficult for the reader to visualize the final form in which the smart metering entity will emerge. But one observation can undoubtedly be made: The smart metering entity opens the door for the creation of yet another large and costly bureaucracy that could turn into an all-encompassing stand-alone organization with unprecedented powers to impact on our everyday lives. The bill allows for the creation of infrastructure that is sure to be very costly to install and maintain.

Given past experience with government mega projects, costs are likely to be several times what the current estimates are. Perhaps gentler, less coercive ways are available to provide the benefits of smart metering technology that could be implemented in other ways.

We're concerned that Ontario may be embarking on an experiment that will set us on a course that will leave our farm industry and the rest of Ontario on a less competitive footing with our neighbours than we already are.

In conclusion, we respectfully submit that there are a number of measures that can be made to stave off an electricity or an energy crisis before the draconian aspects of Bill 21 need to be implemented.

On the demand side, we suggest that we're still living in a mindset of about 50 years ago, when nuclear power first came on board and we all had the mindset that energy was going to be almost free. We still have a legacy dating back to those days; there are still thousands of homes out there that are heated with electricity. We feel that an aggressive program to phase out space heating and water heating by resistive electricity use would free up a huge amount of power that would be helpful in saving electricity for the future.

Secondly, we feel that a natural gas distribution network in rural Ontario would allow the conversion of electricity for crop drying, for space heating on the farm, and that again would eliminate the need for electricity.

On the supply side, we feel that it's premature for the government to phase out the coal generation of electric power. We feel that it is in no small measure responsible for the expected supply shortage. While we agree that the objectives to reduce emissions of coal-fired electricity are worthwhile, we are not convinced that leading-edge technology for the reduction has been fully explored.

To sum up, our major concern is the competitive position of our farmers. We are concerned that—especially in the last week or so we've heard reports that the Ontario government plans to introduce gas-fired power generation again. We feel the resource is far too scarce and far too valuable to use for that purpose. Natural gas is a fantastic asset to our farm community, and to the rest of Ontario for that matter. It's easily transported to the final

point of consumption. I've got a furnace in my home that works at 95% capacity and efficiency. In livestock buildings, when natural gas is used, it can be as much as 100% efficient. In other words, it's invaluable for efficient crop drying and space heating in rural Ontario. It's also an important feedstock for fertilizer production. We feel, as a matter of justice for that matter, that it should be a government priority to make natural gas available as a public utility in rural Ontario to help maintain our farmers in a competitive position. We feel that natural gas should be available to all farmers for those purposes, to remain competitive with the rest of the world.

I came across some indication that—and I haven't been able to verify that—somebody made the remark that a 100-watt incandescent light bulb, burning anywhere, only uses an energy efficiency of less than 10%, and possibly as low as 5%. What we're saying is, save natural gas for the farms' use and for its intrinsic value.

Mr. Chairman, it's a pleasure for me to have been able to address you. If there are any questions, I'd be more than happy to entertain those.

The Chair: Thank you very much for your initial remarks, Mr. Sommer. We do have time for questions. We'll have about two minutes per side, efficient if you might. We'll begin with the official opposition.

Mr. Toby Barrett (Haldimand–Norfolk–Brant): Thank you, Frank, for the presentation on behalf of the Haldimand federation. Just a comment; I think Mr. Yakabuski would have a question. I agree, how precious natural gas is, just for cooking alone, for example. We have a good distribution system in our area for telephone—even cellphone—and electricity, but we don't have the natural gas distribution. Many of us have gas wells on our own farms, but we can't access the system to use it in our buildings or in our homes. I'm not sure, for those of us who have to heat with electricity, how a smart meter that allows you to adjust it in the evening is going to help, because normally we want to use less in the evening, or we keep the home cooler in the evening. That's just a comment that I have.

Mr. Yakabuski, do you have a question?

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke): Thank you very much for your presentation. It would appear to me, from your presentation, that what you're suggesting, and I think correctly so, is that there are far more efficient ways to use our limited resource of natural gas than in power plants, which will be operating at much less efficiency than natural gas heating systems, either in the agricultural or residential applications. Is that, in a nutshell, part of what your concern is with the move to natural gas that the government is saying they want to do for producing electricity?

Mr. Sommer: Yes, exactly. I feel that electricity generation in general can be very efficient when we produce it with water or hydro power, or cheap coal, of which there appears to be an abundance. We've learned just in the last year or so that the supply of natural gas is finite, within our horizon. There's not enough there to last for generations, certainly.

The Chair: I'll need to intervene there. Thank you Mr. Yakabuski. We'll now move to Mr. Hampton.

Mr. Howard Hampton (Kenora–Rainy River): I want to ask you a question about smart meters. It's a question I've asked almost everyone that's appeared before the committee. We've been told by local distribution companies, for example Hamilton Hydro, Toronto Hydro, many of the local hydro supply companies, that they think the cost of smart meters is going to be much higher than \$1 billion. They're saying \$2 billion could be within the ballpark when you consider all the infrastructure.

1350

My question is, I think \$2 billion is a lot of money to spend, and I think before you'd want to spend \$2 billion, you'd want to have some sort of cost-benefit analysis that would tell you what you're going to get for \$2 billion. Has your organization seen, either locally or through the Ontario Federation of Agriculture, any kind of cost-benefit analysis offered by the government on this issue?

Mr. Sommer: No, we haven't.

Mr. Hampton: One thing we were told over the last couple of days is that in urban areas we have a lot of apartment buildings, and air conditioning is an issue. There's a sense that a lot of money could be saved on air conditioning. Could I just ask you, from your knowledge of the local community, (1), how many people have air conditioning installed and, (2), do you have a sense of how much air conditioning is used, say, in this community or in the surrounding rural area?

Mr. Sommer: I have no more than a gut feeling about that. It's certainly much more common to look towards—people almost expect air conditioning today. It's become a norm rather than a luxury in the last few years. Now, just what's the reason for that—we've had some very hot summers in the last year or two. That, of course, has increased the demand. The problem with air conditioning, of course, is it peaks very sporadically, directly related to the weather, like heating, and it's very costly for electricity supply.

The Chair: We'll move now to the government side.

Mr. Jeff Leal (Peterborough): Thank you, Mr. Sommer, for your presentation today. My question specifically is, on page 2 you talk about the creation of the smart metering entity and the fact that this entity will be collecting a significant amount of information. Sir, would you have any ideas for us how we might amend the bill in terms of protecting privacy? Have you got any thoughts on that matter that could help us perhaps draft an amendment to protect individual privacy?

Mr. Sommer: Yes, sir. It's a major concern to me personally. I'm not familiar enough with the processes that are available for us to prevent unauthorized dissemination of private information. It is just a "one more nail in the coffin" type of thing. It's difficult. We see the proliferation of computer technology to the point of cross-referencing of codes and passwords. It's scary to read the press sometimes. The assault on our privacy is a concern, absolutely.

Mr. Leal: My colleague Jennifer Mossop would like to ask you a question.

Ms. Jennifer F. Mossop (Stoney Creek): Just as an aside, don't worry about the media; they're fearmongers. I can tell you that first hand.

There is concern, though, because we all experienced the blackout a few years ago. Many saw that as a wake-up call, as the red flag, as the warning that we had to take energy conservation much more seriously. What we were talking about with some of the presenters in the last few days is that while we try to create a culture of conservation, what we are living in right now, and have been, is a culture of waste. We don't understand here in North America, where we have so much abundance, the need to conserve. It comes naturally to those who've lived through wars or depressions. Maybe our seniors are more familiar with that, but certainly there are many generations that are missing out. Hence, Bill 21 and the efforts.

We've also heard that smart meters are used in a number of jurisdictions that are a little ahead of us, again, in Europe with success.

The Chair: Ms. Mossop, with apologies, I'm going to have to intervene and keep those comments rhetorical for now. I'd like to thank you on behalf of the committee, Mr. Sommer, for coming forward for this deputation. We appreciate the time that you've taken and your remarks.

CLEAN AFFORDABLE ENERGY ALLIANCE

The Chair: I'd now like to, with your permission, invite our next presenter to come forward. That is Ms. Carol Chudy of the Clean Affordable Energy Alliance. Please come forward. You've seen the protocol: 20 minutes in which to make your remarks and the time remaining will be distributed amongst the parties afterward for questions. I invite you to begin now, please.

Ms. Carol Chudy: Good afternoon. I am Carol Chudy. I am the co-chair of the Clean Affordable Energy Alliance. As the voice for Ontario's energy ratepayers, we are very concerned about the politics and policies regarding electricity restructuring in Ontario. We wish to address the committee this afternoon on specific issues related to the Energy Conservation Leadership Act, the impact this legislation will have on the public ability to reduce electricity demand in our province and in particular, of course, smart meters.

The proposed legislation provides the framework for the government's commitment to install 800,000 smart meters in Ontario homes and businesses by 2007, and then all homes and businesses by 2010. While it is true, as was said a moment ago, that Canadians consume more energy per capita than any other jurisdiction in the world, we must remember a few things: our manufacturing and industry, our natural resource-based economy—i.e., reining and refining—plus our climate variances—hotter, humid summers and traditionally colder winters—create an energy-intensive nation. Even as has been mentioned, when we think of high-rise apartments and the amount of air conditioning, the urbanization that we do have going

on creates that additional energy intensity. We enjoy a technologically based lifestyle. We cannot pump gas, we cannot get money from an ATM, ride in elevators or use our computers—anything like that—without electricity. We are an electricity-dependent nation.

However, having said that, we can reduce the power that we use in this province for the good of our environment and our economy. The government is to be commended for seeking ways to mitigate the pressures on an already strained electricity system—a system, I might add, that operates with a dangerously low reserve capacity. Without a doubt, conservation of electricity ought to—in fact, must—play a role in Ontario's energy strategy.

However, are smart meters a good part of that strategy? That's what we want to address you on today: what smart meters promise; whether they can fulfill that promise; the purpose of smart meters; the price of smart meters; and finally, some conclusions.

We look at smart meters within the parameters of the energy ministry mandate to provide affordable, reliable power for the people of Ontario. The energy minister, Mrs. Cansfield, has indicated that the installation of smart meters will give—and this is the purpose—Ontarians “the tools they need to make intelligent choices about electricity use” and to help save money. The Ministry of Energy website indicates that smart meters will “provide consumers with greater control over their energy costs that can lead to system-wide savings through reduced peak demands.” “With smart metering, customers can choose to control their energy costs through moving usage to off-peak” times.

If we have smart metering combined with a pricing structure that will come in the future that will reflect the cost of power production at certain times of day and times of year, this will allow consumers to make informed decisions. Again, as told to us, Ontario consumers will reduce the strain at peak times. Therefore, the promise of smart meters is dual-based: cost savings and reducing power system strain by load shifting.

Can smart meters fulfill the promise? That's an important question to ask. With regard to cost, the Ministry of Energy indicates installation costs of about \$1 billion. As Mr. Hampton has said to us, it's probably now closer to \$2 billion, plus maintenance, plus monitoring costs. We have to remember that there is no net power reduction, although the Ontario Power Authority estimates 500 MW for power planning purposes; we think probably closer to 300 MW. We have to remember the load is not reduced, it is shifted.

The initial cost for the meter is approximately \$500 per household, plus monthly fees for monitoring and processing of information. The key word here is “estimate,” because again, as has been pointed out, no firm costs and no firm cost benefits have been determined. In order to determine savings or added costs for the affected ratepayers as well as the province, we have to consider the following factors.

There is going to be a telecommunications infrastructure for monitoring of meters, as well as constant

updates with the software and technology, as we know. There will be information provided to the OPA from conservation consultants. Lower-income earners, we've heard, respond better to time-of-day changes than do average consumers. We see that these consumers will benefit by not incurring higher prices, but not positively rewarded for their efforts.

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According to the legislation, as the former participant has indicated, a smart metering entity will be formed; in other words, another level of bureaucracy. Additional departments, companies and personnel translate into higher costs. There will be another function implemented by the LCDs, and that will add to their costs. The question is how much the metering will effectively cost and how much a household can save. If the difference is low or negligible, the passing of this legislation is counter-productive to the reason for its creation. The overall savings, we believe, will not be sufficient to justify the costs.

Again, we note that the meter itself does not conserve power; rather, it is designed to change behaviour and modify the lifestyles of Ontarians and small business. Even the OPA report indicates to us that conservation and demand management "relies on public uptake and behaviour." It's dependent on the public being willing to change. The degree of success of smart meters will determine the worth of these meters.

Two factors come into play here: The ability to change, and the desire to modify lifestyle. For those who cannot change, the legislation is punitive, not incentive. We think of seniors, shift workers, even young mothers who stay home with their children during the day. They will be penalized for using energy when they are able and when convenient. Some who are electricity-dependent for health reasons—and we get information from such people. They need their respirators, they need air conditioning because of health and respiratory problems. They will be unnecessarily penalized because they cannot switch the time of use.

The farming community, as we've heard, will suffer. Agriculture is Ontario's second-largest industry. Reliable and reasonably priced power is essential to their sustainability. Much of the farming activities that are energy-intensive simply cannot be shifted. You can't turn off your greenhouse at peak time. You can't stop your heating or air conditioning for livestock, milking and storage of product etc.

Smaller businesses having hours of operation coinciding with peak-of-day use will likewise be penalized. We have to remember the current lifestyle, particularly in Ontario, where we have a lot of two-income earners. The household is empty during the day, so you anticipate a hot summer day, the air conditioning isn't on during the day, they're not running the dishwasher or the dryer. They come home and when it's now lower-peak time of the day, those things will begin to happen. You're shifting your load, but not necessarily for a profitable reason.

There are concerns too with load shifting: Someone has pointed out that the McGuinty government is

encouraging to throw your dryer on in the night time, and yet the insurance companies indicate to us that dryers are a cause of house fires. There are some things that just have not been carefully thought through.

There is inequity for those who work the hardest to conserve energy and those who will still choose not to. AMPCO has indicated, "It may be argued that the customers who participate create benefits for all customers whether or not they participate...."

In California, an opposite tack was used. They used an incentive 20-20 program. If you reduced 20% of your electricity use for a four-month period over the summer-time from what you used a year before, then you were incented with a 20% rebate. That is given to those who are most profitable at conserving.

Many people are concerned about accessing information via the Internet, or having complicated bills and the sharing of that information.

Some will not gain from their desire to conserve or load-shift, so will be disinclined to do so. For example, those who are in condominiums or through rental fees do not benefit. The Ministry of Energy website—actually, Oakville Hydro—has indicated that whether or not new prices are passed on depends on arrangements with particular landlords or condominium corporations.

Consultants' reports to the OPA indicate that where conservation has worked the best, there have been sustained efforts over long periods of time using frequent messages: Information/education is the best conservation tool.

The Ministry of Energy has only recently begun to implement aggressive educational measures to encourage public participation in conservation. The many requests by the IESO this past summer—about 50 times—to reduce consumption met with considerable positive response in light of the higher than normal temperatures. Ontarians, when given a fair chance, respond positively. We have not even given them a chance to respond to these initiatives and programs, yet in Ontario we are told we have to have smart meters. There is no option.

Smart meters are not so much a tool to assist with cost savings. They are mandatory devices alongside new rate regulations that result in penalties and charges for time-of-day use. The Ministry of Energy is not doing the ratepayers any favour by providing these smart meters.

We conclude that those who make changes in order to save money will do so if they are educated with ways and means, those who choose not to make lifestyle changes will pay the bill regardless, and those who are unable to reduce load at peak times will be wrongfully penalized.

The second criterion for smart meters: Will they work? Will they reduce peak load through shifting demand? In the summer, people will be encouraged to turn down their air conditioners through the day, not run their units, then run their units in the evenings and through the night. Shifting load for dishwashers, clothes washers, dryers etc. to evening and night hours will create higher peak usage in the night, thereby shifting the peak, not the load—the very thing this legislation is trying to avoid.

Another possible outcome will be to reduce the height of the peak—that is, have less power requirement at that peak—but then have the peak last for a longer time so that it actually flattens out. This will have the effect of creating less use, but over a greater period of time in the day.

The IESO has pointed out that in the summertime, there's a bit of a shift from your high peak for a short time to a peak of about 10 to 14 hours a day for many days in a row in the summer months. It will likely be more of what previously had been considered intermediate generation. If you look at the chart that we have there on page 5, you'll see the new OPA recommendations. There's really not a lot of room for intermediate power generation.

Currently, coal-fired generation supplies primarily intermediate demand, as well as base and peak, but with the removal of coal and the strong recommendations from the OPA that natural gas be used for peaking purposes only, there is little generation available for that intermediate load. Nuclear is baseload. Hydro, although it can serve as base, intermediate and peak, depends on water levels, traditionally lower in the summer months. Wind power is only rated at about 10% capacity during the summer weather conditions. So you see, then, that there's a problem: If you have a longer sustained load in the summertime rather than peaks, you require more intermediate generation. The OPA, with their recommendations, is wiping out a good part of that.

Will smart meters effectively shift load to off-peak times? The answer: It may precipitate an unwanted reaction that the system will be unprepared to deal with. Reaction in the future in terms of fuel mix to balance load requirements could be very costly.

We conclude that there are many factors and long-term ramifications that have not been considered by the Ministry of Energy in the determination to proceed with smart meter implementation. So what's the purpose of smart meters and of conservation?

The Ministry of Energy has noted, "Energy conservation has many benefits. Not only will our energy sector and economy benefit ... so will our environment." They go on to say that the province then will need to rely less on coal-fired plants to produce power. Interestingly, it was indicated that the government wants to reduce peak electricity generation at the same time that it wants to close coal-fired plants.

You can see that herein lies the key to one of the reasons for the rush to implement smart meters; that is, the coal closure deadline. This document was obtained from the Ministry of Energy website regarding smart meters, and they comment there: "The pending retirement of coal plants, plus growth in demand for electricity, has increased the urgency to create a culture of conservation." The urgency and the rush has been created by the rush to close coal-fired generation.

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Like so much of the current plans of the Ministry of Energy, panic to fill the energy gap anticipated by the coal closure policy is forcing decisions to be made in the

short term. Conservation is not deemed, then, to be something good for the economy and the environment, but is perceived as mitigation for the loss of 25% of the provincial power supply. Would it not be more prudent to educate the public and determine how effective widespread information could be before enforcing expensive metering?

The Ministry of Energy is planning on charging Ontario residential and small business ratepayers over \$1 billion to net 300 to 500 megawatts of power while prematurely shutting down 7,500 megawatts of coal-fired generation. The Ministry of Energy is forcing the Ontario public to incur the additional expenses of smart metering while negotiating over 6,000 to 7,500 megawatts of natural gas power, which will cost at least \$11 billion—these are figures from the OPA recommendation—in capital costs alone, plus significantly higher hydro and energy rates.

The price of power: The cost of smart metering directly impacts the costs that consumers will pay for their electricity every month. Therefore, the smart meter policy and the legislation before you cannot be viewed in isolation, separate from the entire energy restructuring. The Ontario Power Authority, when they recently released their report back in December, indicated that \$56 billion to \$83 billion will be paid for electricity restructuring in Ontario. That translates automatically, for capital costs alone, to 30% on our hydro bills every year for the next 20 years. Some of these costs absolutely can and must be mitigated.

There are unrelated costs that will cause power to escalate even further:

—Natural gas costs, according to the OPA, have quadrupled in five years, and are expected to remain high and volatile. Supply risks impact the wisdom of this move.

—Removing coal-fired generation, the stability in the power grid both economically and in terms of generation characteristics, with the loss of valuable assets, plant decommissioning, and the loss of income from those plants, which goes back into the system to offset other costs, and which will be given to private foreign ownership.

—Natural gas will replace coal for the market-setting price. Coal has set the price 56% of the time. If you remove that, natural gas will be setting the market price 56% of the time, at triple the cost of coal.

—Using natural gas for electricity at 43% to 60% efficiency will impact home heating costs and industrial processes.

—The IESO warns that the provincial government plan to phase out coal represents the largest and most significant electricity system change ever undertaken in Ontario, and involves major technical considerations, significant risks and challenges. Again and again through the recent OPA report, that has been confirmed.

—Nuclear units will require replacement or refurbishment within 10 years. The cost? An estimated \$30 billion to \$40 billion. And, as has been indicated to us, even the highest costs are probably on the low side.

Costs must be mitigated where possible. Prudent planning, abandoning unnecessary or premature plans, must be considered, and that's what we bring before you today. The ratepayers of Ontario simply cannot absorb the higher electricity prices which are predicted. The impact of higher energy costs is just beginning to be felt in Ontario. This past week, the media reported 1,100 jobs to be cut at B.F. Goodrich. This brings us to a total of 61,000 jobs in Ontario, and another 50,000, they indicate, to come.

The Chair: Ms. Chudy, I would just invite you to bring your remarks to a close. You have about 20 seconds left.

Ms. Chudy: Thank you. At the back of our report, I would ask you to please read comments from business, industry, the economic drivers of our community, and the farming community, who say the impact in Ontario of higher energy costs is going to devastate this province. Please consider this when you consider smart meter legislation.

The Chair: Thank you, Ms. Chudy, for your submission. As I've just mentioned, regrettably, we don't have any time left over for questions and comments, but thank you for your written submission, which is very much appreciated.

POWER WORKERS' UNION, SECTOR 2, UNIT 5

The Chair: I'd now like to invite our presenter, Mr. Paul Serruys, chief steward of the Power Workers' Union, sector 2, unit 5, and entourage. Gentlemen, as you've seen, the protocol is 20 minutes in which to make your presentation, time remaining afterwards to be distributed evenly. If you might introduce yourselves as you're speaking for the purposes of recording, please begin.

Mr. Bob Menard: My name is Bob Menard. I'm a staff person with the Power Workers' Union. Paul will be doing the presentation, but I just wanted to briefly explain the package we brought along: a Cerlox-bound presentation, both oral and written. There's also a DVD, a 13-minute documentary that we prepared from a trip to Europe that talks about clean-coal technologies that you might find of some interest; and a recent presentation from a clean-coal conference in Calgary that discusses some of the issues of clean-coal technology and how it could be implemented in Ontario.

I'll now turn it over to Paul.

Mr. Paul Serruys: Good afternoon, and thank you for the opportunity to address the standing committee on justice policy. My name is Paul Serruys, and I'm a union representative with the Power Workers' Union at the Nanticoke thermal generating station. If anybody's in doubt, that is a coal-fired generating station. I'm joined by Mr. Bob Menard, a Power Workers' Union staff officer.

This document has two parts. The first section is comprised of my comments to the standing committee,

which I hope to complete in sufficient time for questions. The second part is the written submission of the Power Workers' Union provided today for your review at a later time.

In my comments, I would like to address one aspect of the proposed legislation as it pertains to the implementation of smart meters from an economic and a consumer perspective. I would like to make it clear that it is not realistic to address the issue of smart meters in isolation from a comprehensive energy policy that is realistic in providing our economy with a clean, affordable, competitive, sustainable, accountable and reliable electricity system.

The Ontario electricity market, as any other market, has a need to balance and accommodate supply and demand issues. As in any other business, demand on the consumer side will determine the generating supply that is required at any given time. Conceptually, smart meters will provide financial incentives to consumers in order to lower peak demand during the day and shift some of that load demand to overnight hours. This would not reduce the total power consumption over a 24-hour period; rather it would reduce the amount of power used during peak demand hours, when prices are higher.

Consumers will support any technology that can result in savings, provided we can demonstrate a return on their investment as a ratepayer as well as a taxpayer. Consumers will need to know the true cost of smart meters and any associated costs, including government subsidies, if any. Who will pay for what and how are the financial benefits generated? How are we going to address the issue of families that do not have the financial resources to install these meters? Will there be any assistance for the less fortunate so they could also benefit?

Increasing pilot projects with smart meters would be a smart approach. This will allow us to determine the actual savings from experience before we apply province-wide installation. There are, however, other major factors that affect peak power periods. One of the primary factors determining peak load periods is generating supply capacity.

Our province has enjoyed population growth as well as economic growth over the past several decades, the net result of an industrious society. Our electric generating capacity has simply not kept up with the growth in demand for electrical power as a result of population and economic growth in the province.

This situation seriously increases the gap between supply and demand at any given time and therefore in turn also increases peak time periods. If the gap between generating capacity and power demand is allowed to further increase, we will reach a point where peak loading will be required to meet what was previously demand met by baseload. This would eliminate the purpose of smart meters since, under these circumstances, we will be at peak load 24 hours on any given day during all seasons.

Anytime baseload capacity is not capable of matching baseload demand, we are in a peak load situation and

have no control over the cost of imported power. Increasing baseload generation capacity, as well as some reserve capacity, would obviously have a positive effect on our attempts to reduce, minimize or even eliminate peak load demand periods when market prices can reach exuberant levels beyond anyone's control.

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The government's energy policy to close all coal-fuelled generation and replace that generating capacity with natural gas-fired generation has the real potential to produce baseload at double the cost. While the lowest-cost producer, coal, is shut down and assets wasted, we will spend billions in new infrastructure costs to build new gas generating stations and gas pipelines so we can produce base electricity power at double the cost. The consumption and demand for natural gas in Ontario will consequently double and, as a result, the cost of natural gas in the province will also double. Future supply issues with natural gas need to be addressed so we don't end up with a new infrastructure and no natural gas to fuel these boilers.

How can any government whose energy policies will result in doubling the cost of baseload electricity, as well as the cost of natural gas, persuade consumers to change their lifestyle and shift 5% of peak load from daytime to nighttime in order to reduce peak load on the electric supply system? It's going to be a tough sell when consumers realize the facts under these circumstances.

If these policies on coal closures are allowed to be implemented, the cost of electric power has the real potential of wiping out profit margins in many industries and businesses, which will leave the province looking for better opportunities.

We already have examples of many employers in different sectors of our economy leaving the province as a result of energy costs. This could very well be the beginning of the exodus if this government proceeds with its plans to shut down coal generation.

The following associations and industries have already warned the government not to proceed with their plan to eliminate coal-fuelled generation but instead to apply clean-emission coal technology to existing plants rather than to waste these assets: AMPCO—the Association of Major Power Consumers—the Ontario Mining Association, the Ontario Federation of Agriculture, the Canadian Chemical Producers' Association, Inco, the Ontario Chamber of Commerce, the Toronto Board of Trade and the Canadian Manufacturers and Exporters, to name a few.

Most of these large employers pay above-average wages for skilled workers and will be welcomed in any country, state or province should they be forced to leave our province as a result of misguided government energy policies. Furthermore, if these government energy policies are allowed to be implemented, the resulting cost for power and natural gas will also affect budgets of school boards, hospitals, cities and counties throughout the province. These budgets are also funded by Ontario taxpayers.

Unemployment could very well become the only growth sector in the province. We could very well witness the first government anywhere who's capable of wiping out its own tax base.

Our energy policies must continue to pursue and encourage conservation measures as well as renewable energy uses, and apply these energy sources whenever they are available in order to reduce overall power demand.

We must also realize the limitations of renewable energy sources from a reliability perspective, in the sense that they will not replace base or peak load that drives our economy anytime soon in the foreseeable future.

Clean-emission technology for coal-fuelled generation has been successfully implemented and accepted in many densely populated areas worldwide. You can include Germany, Denmark, Sweden and many more countries. When I say "worldwide," I mean western Europe as well.

We can no longer ignore the fact that the answer for the Ontario electricity production and its economy in large part will depend on the abundance of coal we have in North America.

Applying clean-emission coal technologies will also address our environmental concerns without putting our economy at risk. The infrastructure costs to apply these technologies on all coal generating stations would only be a fraction of the cost of the capital required to replace them. When I see a cost of \$1 billion to \$2 billion on smart meters, that would go a long way to refurbishing those coal-fired stations which are your lowest-cost producers with clean emission controls that work in every other country or state.

The real crime against the environment is to delay the installation of clean-emission coal technology when that technology is available.

Lambton generating station is one of the cleanest coal-fuelled stations in North America, yet the government plans to shut it down in 2007 to replace it with—guess what?—natural gas.

We should also remember that Ontario's economic success was driven primarily on the basis of affordable energy as well as by generations of a hard-working society. Without large fuel resources of our own in the province, combined with the phasing out of coal-fired generation, our competitive edge will be lost in many sectors of our economy. The government needs to rethink its energy policies, specifically the shutdown of all coal generators in the province, before we reach a point of no return.

Respectfully submitted. Thank you.

The Chair: Thank you very much, gentlemen. We have ample time for questions, about three minutes each, and we'll begin with Mr. Hampton of the NDP.

Mr. Hampton: I'm looking at your written document here and you make a lot of statements about energy efficiency. One thing that comes to mind—and I note that you've got California included here—is that California, since the meltdown of 2001, has embarked on a very ambitious energy efficiency program. The figures we've

seen suggest that they now save the equivalent of 12,000 megawatts on an annual basis. In other words, it would be the equivalent, I guess, of roughly three Darlington.

What's ironic, though, when you read the literature, is that they have very little mention of smart meters. They achieve 2,000 megawatts of savings by regulating that people in California can only use energy-efficient appliances, so energy-efficient fridges, driers, washers, so on. They achieved 4,000 megawatts of savings by changing the building code, requiring that you can't build a building in California now unless it's very efficient. They achieved 6,000 megawatts of savings through things like energy-efficiency retrofitting of buildings and things like the 20-20 policy that was mentioned earlier. They give you an incentive to reduce your electricity consumption and they have various demand management programs for industry. If industry is willing to shut down at certain peak times, they'll actually pay them money.

California actually has some results: 12,000 megawatts, which is fairly impressive. You work for the Power Workers. Have you seen any cost-benefit analysis for smart meters? Have you seen anything that says, for an investment of \$2 billion, this is what the result will be?

Mr. Serruys: No, I haven't, personally.

Mr. Hampton: Has anybody else in the Power Workers seen a cost-benefit analysis for smart meters? I guess I'm asking your colleague.

Mr. Menard: The issue of cost benefit hasn't been as explored as much as it should. We would agree with you that there needs to be considerably more thought given to it and the other aspects of a diverse supply system in the province of Ontario. We spent a bit of effort putting together a website and documentation that I think we've shared with most of you, called A Better Plan. In there, we talk about reasonable efforts for energy efficiency and conservation. I would suggest that all of that needs to be subject to some sort of a cost-benefit analysis to ensure that the proper amount of monies are spent in the best way possible.

Mr. Hampton: Thank you for that. My point is this: I think the overwhelming majority of Ontarians are interested in energy efficiency and energy conservation. But I think people recognize from their own homes that if there were some incentives so they could put in, say, high-efficiency natural gas heating—and that's expensive; I know, because I put one in. If there were some incentives so they could afford to reinsulate their homes, put in energy-efficient windows, buy energy-efficient appliances, I think most people would be happy to do that, because people could see an actual result. But simply saying to someone, "We're going to charge you \$6 a month, \$8 a month for this gadget, but it in itself is not going to save you any energy"—I think people are rightfully questioning that.

The Chair: We'll now move to the government side.

Mr. Leal: Thank you all for your presentation. You made an interesting observation: Increasing the pilot projects for smart meters would be a smart approach. Just

to let you know, we've had Ontario Hydro One smart meter pilots in Barrie, Brampton, Lincoln, Peterborough and Timmins and feel we're on the right track. We've been following that advice that you provided today.

My colleague Bob Delaney has a question, and my colleague Kevin Flynn does too.

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Mr. Bob Delaney (Mississauga West): Concerning the subject of the bill, which is conservation and smart meters, you indicated that you had some reservations regarding the effectiveness of smart meters. Am I encapsulating that correctly?

Mr. Serruys: My basic point is that as you let your supply side deteriorate, what is the use? What is the purpose of a smart meter? If we're losing baseload, we're going to be increasing times on peak load. The purpose of a meter is only to differentiate between the rates of baseload, intermediate load and peak load. So unless we look at the supply side, energy supply, it will just wipe out the purpose of a smart meter.

Mr. Delaney: I'm going to read verbatim from your brief. On page 15 you state, "In the PWU's view, the proposed smart metering legislation would adequately put in place the tools to implement smart metering in Ontario in an efficient and effective way that recognizes both the role and experience of Ontario's local distribution companies, and the opportunities to benefit from common data services."

Mr. Menard: Let me make that comment. We participate regularly in all activities associated with the electricity industry. That particular position was taken out of the comments that we made when the Ontario Energy Board ran a process to have comment on the smart meter initiative. We took the position that since we had some expertise in the industry, we ought to review the proposal from the point of best practices, and that's what that statement relates to, that in the installation and use of these smart meters, there are in fact some positive things that are included in the plan that was put forward by the Ontario Energy Board. I think what we're hearing here is a different issue discussed, and that is the relative cost benefit of those meters in society as opposed to, for instance, rehabilitating new generation.

The Chair: Regrettably, we'll have to move beyond the government side to the official opposition.

Mr. Barrett: Thank you, Bob and Paul, for the presentation of the Power Workers. Your reservations about smart meters and your concern about shutting down coal—as the area representative, I have certainly been receiving that input for the last two and a half, going on three years, in particular around shutting down coal.

I just wanted to mention—I think John has a question—that I've also received briefs, Chair. As far as reservations about smart meters, I have briefs here from Brant county, Brant County Power and Norfolk Power. I know Norfolk Power is here, but they're not presenting. I'll pass these on to the clerk.

Secondly, I have briefs from Caledonia Regional Chamber of Commerce around the inadvisability of

shutting down coal, and also feedback from the Port Dover Board of Trade and Haldimand county.

Normally, you would expect these groups to testify, but I think they felt that this was not the appropriate venue. They thought it was strictly about meters, so they didn't testify. I'll pass on their briefs and feedback.

John, did you have a question?

Mr. Yakabuski: Thank you very much for your presentation and for joining us today. I'll make a statement and you can comment on it. It seems that the government is pretty good at defining a destination, i.e., reducing energy consumption or cleaner air, but they're very, very poor at navigating a route how to get there. With regard to their coal policy, I think they've created a real mess, and it's coming back as more and more people become involved in the process and become educated in the process as to what this is actually going to mean to the province of Ontario. Even the government members over there are getting very skittish and being less pompous about their promise and commitment to shut down coal, and even the energy minister is getting somewhat ambiguous in her statements—

Mr. Hampton: Shy.

Mr. Yakabuski: "Shy" would be a good word. Was this whole policy more just about politics because they thought they had a winner, and maybe they were wrong?

Mr. Menard: We've had opportunity to speak with government representatives, and I think that the policy comes from a time when there was a lack of information about what could be done to improve air quality from coal stations. There certainly was a whole different pricing regime for natural gas, the alternative fuel of choice, and there was a general perception that there might be quick answers to really complicated problems in Ontario's energy sector. What we and others have found over the ensuing years is that, first of all, basing an electricity policy on another fossil fuel that is even more volatile than some other ones we could be using and not really making the effort to look at what technologies exist today to improve—

The Chair: Thank you, Mr. Yakabuski and Mr. Barrett, and apologies to you, Mr. Serruys and Mr. Menard. I'd like to thank you once again, on behalf of the committee, for your deputation on behalf of the Power Workers' Union, sector 2, unit 5. We have your submission, and we appreciate it very much.

Interjections.

The Chair: Regrettably, there is no Sergeant at Arms at this committee, as there would be in Parliament, for enforcement of decorum. I believe, because the Legislature is coming back in session next week, our members are practising. Perhaps for the next committee meeting we can arrange for one.

GOLDEN EBM TECHNOLOGY INC.

The Chair: I would now like to invite our next presenter, Mr. Ray Simpson, secretary-treasurer of Golden EBM Technology. Mr. Simpson, as you've seen in the

protocol, you have 20 minutes in which to make your presentation, with questions and comments afterward. Please begin.

Mr. Ray Simpson: Thank you. I'd like to welcome the MPPs to this great part of southern Ontario and also staff members and any guests who are here, plus presenters.

My background: I'm retired. I spent some time on council in Brantford and worked on getting a casino for Brantford, which is a wonderful thing; we have a huge payroll of around \$34 million. After the casino, I got involved with wind power. I spent two and a half years working on wind power with Stelco, and we found it wasn't economical. Today I'm here to speak to Bill 21.

My name is Ray Simpson, representing Golden EBM Technology Inc. I am speaking on behalf of both Norfolk and Brant homeowners who may be forced to accept the smart meters at a high cost to each power end user. This appears to be a money grab to compensate the power companies that have failed to look for power in the future. According to a memo from Toby Barrett's office, the cost of these meters could be very high, as the government hasn't worked out the cost as of December 19, 2005. The extra cost of these meters will be passed on to rural Ontario customers, who are now struggling to exist.

Just to add an aside here, I also belong to the Inventors' Club. I got a call this morning to say that there's a new industry that will start up because of the smart meters. They are looking at getting batteries for storage, hook on to the system between 1 a.m. and 6 a.m. when power is cheap, store it and use it for the rest of the day to save on power. If they can buy it at three cents, that's great; they can use it during the day. This will provide work for companies to build inverters to change the power from DC back to AC, and it will be good for the battery companies. I didn't have time to have that written in.

How can dairy farmers change the routine of milking their cows from 1 a.m. to 5 a.m. in order to get cheaper power? This will only help, in some cases, to quicken the bankruptcy of some farmers. It will be interesting to see bureaucrats travel to dairy farms to educate the cows to be milked at this time for the cheaper power rates, and to tell housewives to get up at 1 a.m. to wash and dry the clothes. This could also apply to doing the dishes, vacuuming etc.

1440

As for Norfolk county, the area will become a separate provider of cheap power within the next seven years. Presently, Norfolk uses 65 to 70 megawatts of power, and with the installation of 11 10-megawatt units, it will provide approximately 40 megawatts or more, depending on the time of day, in the Ontario grid, 24 hours a day, 365 days a year. Along with these units will come an increase in industry and greenhouses for many crops, thus making Norfolk a good place to be for cheaper power in the future.

With reference to coal generation, Nanticoke is a unit that is necessary to keep Ontario power up in peak

demand times, as it can be activated very quickly to sustain a steady power supply.

In reference to nuclear power, why construct a unit similar to Douglas Point and create an area called "cancer valley" by the London hospitals? It seems to be an area where there are more cancer-related illnesses than any other. Besides, it's too costly to build—just study the cost of Darlington—and this doesn't include the cost of dismantling it.

In my presentation, I have a page showing EBM. We put a little bit in here about global consumption of fossil fuels as estimated to release 22 billion tonnes of carbon dioxide into the atmosphere every year, and the amounts are still growing.

Energy by motion technology: After almost 20 years of high-level research and development, a new source of energy has emerged. It is called EBM, energy by motion. It incorporates a uniquely configured rotation machine using laminated steel and copper windings. A previously unknown source in a magnetic field with an unusual geometry, which behaves unlike any other known field, allows EBM units to constantly produce excess power.

This is a Canadian invention. They spent 20 years in a building near the Toronto airport. At that time, they had NASA working with them, a group in London, England, and, later on, a group in Budapest.

All that EBM needs to start it is a small DC motor. If you're out where there's no power at all, you go to a local farmer and get a John Deere, hook on to it and start it up. Initially, it rotates the EBM drive unit, and it achieves operating speed. Its unique geometry allows extra shaft power to be produced as the rotor is rotated through the magnetic field. The shaft power is converted to electricity via a synchronous generator attached to the shaft of the EBM unit. A small quantity of the electricity is then fed back into the EBM unit to continue the rotation. The excess power produced can then be used or sold for profit. In other words, when we sell a 10-megawatt unit, it is actually producing 15-megawatts—it will be the 15-megawatt generator. It will take five megawatts back to drive the EBM motor, giving you 10 megawatts to feed into the grid 24 hours a day, seven days a week.

It can replace coal-fired, oil-fired and nuclear plants. It can be used for desalination of salt water, heating and cooling for various applications, inexpensive hydrogen for fuel cell technology, oxygen and hydrogen manufacture for infertile land, water treatment, and plasma destruction of wastes.

Benefits: Traditional methods of power production add greatly to the emission of greenhouse gases; notably, carbon dioxide, methane, nitrous oxides and chlorofluorocarbons, not to mention a host of other related chemicals. These emissions pose great danger to the world.

The long-term availability of conventional fossil fuel reserves is not guaranteed. The contribution of renewable power sources is dominating current discussion of energy issues around the world. The most available and

economically sound form of renewable energy is hydro power. The majority of the best hydro sites around the world, having the most water with greatest capacity for turning turbines, have long since been exploited.

EBM is more than a new, highly efficient energy source. It has major economic and environmental benefits, including: emits no pollutants; emits no noise; can be buried in populated areas, freeing up real estate; is 100% reliable with predictable maintenance; is low-maintenance—a maximum of 10 hours a year; inexpensive per kilowatt hour rates; quick delivery time to installation; and a truly friendly energy source.

We also show here the competition. Of course there is coal, the lifetime of which is 25 years. EBM claims it will be a 40-year unit. Hydro plants are 40 years, with six years to build them. Gas turbines are 20 years, with three to five years to build them. One MPP stood up last fall and said that to produce a kilowatt of power with gas is seven and a quarter cents. Since then, it's a lot more because gas has gone up. Nuclear power takes 12 years to build, with 15-year lifetime and an enormous expense.

An EBM power program provides you with an opportunity to realize your organization's environmental commitment to your customer, your stakeholders and the world. OPG provided us with the figures on page 5. In fact, they came right out of Nanticoke. They're just copied right from there; we put the top two lines in. Nitrogen oxide: 96 tonnes. Multiply that by 10, and that's 960 tonnes that 10 units would save. Sulphur dioxide: Multiply that figure and you've got 3,150 tonnes. Carbon dioxide: multiply that by 10 and you've got 77,000 tonnes that you're saving.

If you note just below, we show 60 megawatts. We did that for the city of Brantford; we did a presentation to them.

Next is a copy of a letter from a good friend, Toby Barrett. It was written on March 14, 2004, to the Hon. Dwight Duncan. It refers to EBM energy. He was just asking him to acknowledge the package that he got, which he had within a week and a half of being elected at the last election.

Along with him, there were three other packages delivered by my good friend Dave Levac. I've been working with Dave on this for a long time, along with Toby. Agriculture Minister Steve Peters had a copy, along with Minister of the Environment Leona Dombrowsky and Minister of Economic Development and Trade Joe Cordiano. Not one of them has answered or acknowledged even to say, "We just threw the file in the garbage."

The next page is about nuclear. It's very disturbing when you read about what has been thrown into the lakes. Next is an article, "Power Needs Could Delay Closing of Coal-fired Plants." I'm not in agreement with that, because they can find better coal, and with EBM coming on over a period of time, they can just keep the plant as a quick power-up.

In our great day of technology, the computer went on the fritz, so I had to make some quick notes here.

EBM: Cheap power, six cents per kilowatt for five years. That's guaranteed. Savings to Norfolk: no power loss from the time it leaves a big power plant; savings in power lines—Hydro One won't have to put any more big power lines around the country. That may disturb some of them because that will put a little bit of work out of their hands. These units can be worked out at 10, 20, 25, 50 MW. They are working on, at the present time, a 250-megawatt. One of their engineers has been to Nanticoke and looked over the situation down there and he feels that they can design a 250-megawatt, so it will take 16 of them to replace Nanticoke. But he doesn't advise it. He still says they need a Nanticoke as an up-and-down unit.

1450

Gas turbines: Producing power costs seven and a quarter cents per kilowatt, and even more. That's not even paying for the unit.

Power supply by wind power: That is very interesting. I worked on that. We found out that at eight cents—three and a half or four years ago we were guaranteed eight cents a kilowatt—we could not make it a feasible thing. It just wasn't there. You took 30 years to pay for it, and in the meantime you had to replace the whole head at an enormous cost. The repairs on them are costly. But that was then. We just found out last Friday that the units going up at Shelburne have signed a sweetheart deal. They're getting eight cents the first year, 11 cents the second year and 14 cents the third year. So that's an indication that power could be going up in the next three or four years.

Gentlemen, I'm pleased to be here today and honoured to be in such company. Thank you.

The Chair: Thank you, Mr. Simpson. We have about five minutes in total, so I guess that means about 90 seconds each. We'll start with the government side.

Mr. Kevin Daniel Flynn (Oakville): The EBM: I haven't heard of this before, I'll be honest with you. I'm always intrigued by new ideas that people bring forward. It sounds a bit like the perpetual motion machine that I remember as a kid, that everyone was trying to find.

Mr. Simpson: Perpetual motion—there are 1,100 of them designed. They work, but they have no shaft power.

Mr. Flynn: Where would I see one of these that is working?

Mr. Simpson: There will be one here in Norfolk, possibly this fall, called Port Ryerse Power. It will be the showpiece of Canada and the United States.

Mr. Flynn: You mentioned some other cities. One of them was Budapest. Is there one in operation in Budapest?

Mr. Simpson: The boys moved from Toronto and went to Budapest because the engineering cost is one third over there, and they finished designing the unit over there.

Mr. Flynn: So that's operating now?

Mr. Simpson: They have a small prototype running. It will operate 50 one-horsepower motors hooked to whatever you want to hook them up to. They have been able to raise close to \$100 million to start building these units.

Mr. Flynn: You talk about "a previously unknown source in a magnetic field..." What is that? What have they found out that we didn't know before?

Mr. Simpson: It's all in the patent. He's got it patented in 60 countries in the world. He has a plan stored on three continents.

The Chair: We'll move now to the official opposition. A question for Mr. Yakabuski, 90 seconds.

Mr. Yakabuski: Thank you very much for your presentation. I'm not surprised that the government side would ask about that unit that's operating in Budapest or Bucharest. Budapest?

Mr. Simpson: Budapest.

Mr. Yakabuski: Because I'm sure they're planning a trip. Probably all five of them will be going there, at our expense, to have a look at it sometime this summer. The minister will probably go as well.

Anyhow, I certainly appreciate your comments on the necessity to maintain the operations here at Nanticoke, because at this time we have no replacements for it. It seems a shame that this party that calls itself the party and the government of the environment has wasted two and a half years, time that we could have been cleaning those coal plants. They have not made a single penny of investment in order to do that. That's a disgrace for the environment.

Thank you very much for your presentation.

Mr. Simpson: I would like to add that this is the first public presentation of the EBM, other than the city of Brantford. Norfolk Power knows about it. They have worked with the engineers at Norfolk Power, engineers who came in and studied the site and also worked with them so that these units can be hooked up. And we've worked with Ontario Hydro. They use the same equipment as they do to hook these units up to the grid. These also have an awful lot of heat. You can put one in, and it was just calculated by another person—not us—that one of these 10-megawatt units will heat 280 houses and air-condition them, plus you have cheap power, guaranteed at six cents.

The Chair: We'll now proceed to Mr. Hampton.

Mr. Yakabuski: I just want one comment: I'll wait to see the one operating in Brantford. I'll come and see it there.

Mr. Simpson: Port Ryerse.

Mr. Hampton: I looked at your brief, and you point out some things here that I think need to be explored. You point out that some things you simply can't switch to off-peak hours, that there are things that we do in our daily lives that you have to do at a certain time. For example, I don't think anyone would ever dream of telling their children that they have to go to school at 10 o'clock at night because it's off-peak for electricity. I don't think anyone would dream of shutting down their freezer or their refrigerator between, say, 9 in the morning and 4 in the afternoon because it's peak time for electricity—which is the other issue with smart meters. A lot of our electricity use is not discretionary; it is determined by appliances that always have to be on—your fridge or

your freezer—or it's determined by the fact that we are not nocturnal animals; we are not raccoons and rattlesnakes. We tend to perform best during the daylight hours. Or it's determined on the other side of the ledger: Many things that the government is citing, we already do at off-peak times.

My wife works, I work, so we don't prepare supper until after 6 o'clock at night, after we get the kids home from school and get everything settled down. You don't wash the dishes—and we still wash them with our hands—you don't do the laundry until 8 o'clock or 9 o'clock at night, after you've got the kids to bed. If this is sort of the normal, everyday rhythm of people's lives, if we can't send our kids to school at midnight, and many of us are already doing things at off-peak hours because the daytime is busy, it says to me that before we go down a \$2-billion boondoggle, there should be some real demonstration of what the benefits of smart meters are going to be.

The Chair: Thank you, Mr. Hampton. Regrettably, the time has expired.

I'd like to thank you, Mr. Simpson, on behalf of the committee for your deputation, for coming forward, as well as your written submission. As I have mentioned, it's very much appreciated.

GRANT CHURCH

The Chair: We'll now hear from our final presenter of the day. I just advise the committee that the scheduled final presenter, Reduce the Juice Project, sent their regrets. So we'll be hearing from Mr. Grant Church, who is here in his capacity as a private citizen. Because of that, he will be allotted 15 minutes, as opposed to the usual 20 minutes, which is the time extended to corporate or organization deputations.

Mr. Church, as you've seen, you have 15 minutes in which to make your presentation. Any time remaining will be distributed evenly among the parties afterwards. Please begin now.

Mr. Grant Church: My name is Grant Church. I live in Cayuga. I work in a stamping plant in Dundas. I'm here as a concerned citizen. I'm not a member of a political party.

I would like to say that smart meters are great if they are optional. Many people and businesses would be hurt as they have no way of shifting their power consumption to the off-hours. Those who have respiratory problems and who live in apartment buildings and have to use air conditioners would be penalized through no fault of their own.

Has a cost-benefit study been done? How much will these smart meters cost? The coal cost-benefit study was grossly flawed and skewed to tell the government what it wanted to hear. The OPA report excluded coal plants at the minister's directive. Again, it told the government what it wanted to hear. So who is saying that we should be forced to use smart meters?

On page 16 of the coal cost-benefit study—and I ask you to turn to that; it's the blue tab, third page in—you'll

note that there's a section for Haldimand Norfolk right in the middle. It says that ozone reduction, if they use stringent controls, would be 48%. If you look at the PM_{2.5}, which is particulate matter of 2.5 microns or less, it's estimated that the reduction would be 69%. Now, it's obvious to me that the best available control technology was not used in this study. There's useful information in this study, but it's useless as a cost-benefit study. I looked at the numbers in the coal cost-benefit study on NO_x emissions at Nanticoke, looking at the six units that didn't have SCRs. I calculated an 80% reduction on those units, and the overall reduction would have been 72% in NO_x. If they went to state-of-the-art technology, which Babcock and Wilcox can supply, they would have got 95%. Looking at 95% on all eight units, there would have been an 87% reduction. Now, if we look at the particulate matter, today's equipment can easily achieve over 95% reduction in particulate matter.

1500

This past fall, in October, I drove to Toronto to meet with Ministry of Energy officials. On the way there on the QEW, I couldn't believe that there was a brown haze obstructing my view of the downtown. The wind was blowing out of the northwest. It wasn't coming from a coal plant; it was coming from Toronto. Toronto's problem is Toronto's problem. A couple of years ago I was in Hamilton down on Gage Street, between King and Main, at my son's apartment. I could hardly breathe the air. My eyes were watering, my throat was burning and my nose was burning. I thought, I live in Cayuga and I have never experienced anything like that, and I live directly downwind from Nanticoke generating station.

Anyway, the list of stringent controls on page 6—you don't have to look at that, but it's included here so you can see it for yourself. Improved low-NO_x burner systems or wet electrostatic precipitators were not included. These are essential to achieve maximum emission reductions. If you just look at the front cover of my report, you'll see what a wet electrostatic precipitator is. This is a tube type. It has a series of tubes with a rod down the middle that they apply 80,000 to 100,000 volts of DC current to. It charges the wet and dry particles negative, which attract to the walls, which are positive, and then periodically they flush the tubes. You could easily get over 95% reduction in particulate matter and acid mists, which include sulphuric acid, hydrochloric and hydrofluoric acids and sulphur trioxide.

New Brunswick Power included this equipment in their Coleson Cove plant upgrade. Why wasn't it included in this study? In 2001, Babcock and Wilcox clearly showed that coal could be burned as cleanly as natural gas, as far as NO_x and particulate matter. It is obvious that there wasn't a professional assessment of what was available.

If you look at the purple tab, it will take you to a document by Babcock and Wilcox entitled, "How Low Can We Go?" If you turn to page 6, you'll see a bar graph which compares coal to natural gas. Clearly, it shows here from their results that coal plants, using either

bituminous coal or Powder River Basin coal, which is a very low-sulphur coal, with SCRs, could achieve NO_x reductions similar to those of a combined-cycle natural gas plant.

OPG invested in Powerspan Corp., which developed the ECO system. It wasn't available at the time the study was done, but it shows that technology is steadily advancing. ECO is an integrated, computer-controlled, multi-pollutant control system. It is designed to follow the load of the generator. This is extremely important because our coal plants rise up and down to follow the load, so we need equipment that will follow the load. I talked to the president of that company personally to get that information. Why is it that I, an individual, common citizen, can call an American corporation, get through to the president and get that information, but the government doesn't seem to be able to get it?

I toured the plant where it is in operation, and it was even better than I had read about. The system is removing over 95% of the 1% to 2% of the particulate matter that the dry electrostatic precipitator missed. The sulphur dioxide emissions are less than 10 parts per million, and as low as one or two parts per million; 90% of the nitric oxides are removed. It is also removing over 95% of the acid mists, including over 99% of the hydrochloric acid and 97% of the hydrofluoric acid; 85% of the mercury is removed along with over 95% of the other metals.

Look to the green tab, and you'll see a page showing metal removal rates. You see that eight of the 10 are being removed at a level over 99%, and that's largely because the system includes a wet electrostatic precipitator. That piece of equipment, by the way, was invented in 1907, it's been commercially available ever since and it was designed to run on a copper smelter to collect copper and sulphuric acid. What do we have to collect at a coal plant? We've got to collect the metals and the sulphuric acid.

Another point to keep in mind: Dry ESPs also remove a significant amount of mercury. At Nanticoke, they remove 50% to 65%. If you add an ECO system, your removal rate is going to be over 90%. At Lambton, they have an SCR-sulphur scrubber combination, which removes up to 95%. The reason for that is, an SCR oxidizes mercury, the sulphur scrubber removes oxidized mercury. If they added a wet ESP to that plant, I figure they might be able to push 100% mercury removal.

If you go to page 9 in the last document—it's the one with the black pages—it shows a picture of the system that I toured. As we went up the tower, there was a window in the sulphur scrubber. You couldn't really see into it; you only saw the face. All you saw was this white, swirling fog. We went up to the top, and looked in the top of the wet ESP: It was as clear as day. I had to take a second look. I could look through the window on the other side. It was that clear.

Another important point about this system is that it generates a very valuable fertilizer product called ammonium sulphate, so you don't have a lot of landfill costs. And the mercury is filtered out, which is a very

small amount of material to dispose of. I believe we should install this equipment on our coal plants and keep them open.

What about nuclear? In the same study, on page 9—it's in here, but you don't have to turn to it—Pickering was expected to cost \$1,400 per installed kilowatt; it cost \$2,600. Bruce units 1 and 2 were to cost \$1,300; it is proposed by Bruce Power to cost \$1,667. Again, I called them to find out how much that would cost. Nuclear is a sinkhole for money, and much of the remaining debt from Ontario Hydro is from building those plants. I think we should keep them open but not build any more until those ones are paid for and find out what to do with the waste. All the waste that was ever created at those plants is still there. We've got a big problem to deal with.

1510

What about natural gas? This past November, the gas generators were asking 14 cents a kilowatt hour, almost three times as much as what we pay. In December, Lennox generating station, which uses natural gas, was asking 19 cents a kilowatt hour, almost four times as much as what we pay. On the New York Mercantile Exchange, natural gas hit a peak of 65 cents a cubic meter. It's only because of this incredible record warm weather that we're having this winter that the price has dropped somewhat. Enbridge said that if we don't get natural gas by LNG tanker—that's liquefied natural gas—in the next five years—and they said this a couple of years ago—we're in deep trouble. They said there'll be gas to meet the basic needs, but it will be at a price we're not going to want to pay.

David Hughes, one of the chief geologists in this country, gave a report to the Ontario government: Don't use gas. It's running out and there's no way that the country can sustain the increase in gas production for consumption to run natural gas-fired electricity stations. In California, if you want to know what happened there, they had a drought. The hydroelectric stations weren't able to produce enough. They tried using their gas stations and the pipelines couldn't supply enough gas. Another fact about California: They don't have coal plants. No, they import 21% of their electricity from coal-fired generating stations outside the state. What will happen if we have a crippling winter like Europe is getting? Will we freeze in the dark, or will we freeze with the lights on? Will we get the gas and no power, or the power and no gas?

In May, we'll likely be facing a 60% increase in the price of electricity, rising from five to eight cents. Spare us more grief by not making smart meters compulsory.

I thank you for hearing my views.

The Chair: Thank you, Mr. Church. We really just have a minute left, so I'll start with the opposition for a quick comment, please.

Mr. Barrett: Thank you, Grant, for testifying. I hear what you're saying on mercury removal with SCRs and other technologies. I'm assuming, given the relative affordability of coal, we can afford to put just about every type of pollution technology that you can think of on the units around Ontario.

One question: What about carbon dioxide? We know natural gas plants also produce carbon dioxide, about half of what coal plants do, but it's still there. How do we get around this? Emissions trading or focus on other areas?

Mr. Church: Three principle ways: One, they can go to a more modern turbine that will give them about 5% reduction in CO₂. Second is biomass: In Denmark they burn wood pellets that they buy from Canada to blend with their coal. The next one is cogeneration. Certainly there's huge amount of surplus heat at Nanticoke that could be used to run greenhouses, for instance.

The Chair: Thank you, Mr. Barrett, and thank you for your efficient answers, Mr. Church. We'll now move to the NDP.

Mr. Hampton: I'm intrigued by your comments about Europe. What do you know about Denmark, Germany etc.? On the one hand, they've invested heavily in wind turbines, but on the other hand, I'm told that almost all of the wind-generated electricity is backed up by coal. What do you know?

Mr. Church: I've heard that every coal generator in Germany has an SCR and sulphur scrubber. That's where they apparently discovered that the SCR was oxidizing mercury, and they're getting basically an 80% reduction in mercury fleet-wide, at least that. There's been interesting work done at the University of Stuttgart. They proved that they could oxidize 100% of the mercury by adding chlorine to the coal exhaust.

The Chair: Thank you, Mr. Hampton and Mr. Church. We'll now move to the government side. Just one minute, gentlemen, please.

Mr. Leal: Thanks very much for your presentation. What are your views on conservation? You spent a lot of time on coal and aspects of that. The bill, of course, is Bill 21, smart metering and conservation. I'd like to hear your views on conservation.

Mr. Church: Okay, well here's my hydro bill. I spent \$35.02 on hydro and \$2.45 on GST. The actual hydro portion was \$13.40. If I have to pay, let's say, a \$7 fee a month for a smart meter, there's no way I can reduce my power consumption any further. Certainly using gas appliances instead of electric—using a gas hot water heater, using a gas dryer. Replacing old microwaves—I had about a three-kilowatt a day drop when I replaced my old microwave. I called the store: "What's going on? I just bought a new microwave." They're just that much

more efficient. Certainly, replacing refrigerators that are 20 years old really helps. Fluorescent lighting—I have fluorescent lighting throughout the house. My heating system—I have a gas fireplace and a radiant heater which doesn't require—

The Chair: Thank you, Mr. Church, for your presentation and your—

Mr. Yakabuski: On a point of order, Mr. Chair. I would certainly love to entertain a motion, if we could compare Mr. Leal's hydro bill to Mr. Church's hydro bill, to see who thinks more of conservation.

The Chair: I believe we'll require an order in council for that, Mr. Yakabuski. You're welcome to submit a petition in Parliament. Thank you.

I'd like to, first of all, thank you on behalf of the committee, Mr. Church, for coming forward, as well as for your very thoughtful written presentation.

I'd like to advise members of the committee that we will be meeting, as you know, tomorrow for day 4 of hearings, Wednesday, February 8, in Chatham, Ontario, at the Wheels Inn. I'm told we'll be leaving from Union Station at 7:50 a.m., meaning the train will be leaving at 7:50 a.m. I've been trying to negotiate with the clerk, Mr. Koch, as to what is the absolute latest he would require us. His opening volley was 7:15 a.m.—

Mr. Hampton: Forget it.

The Chair: —which is approximately my reply.

The Clerk of the Committee (Mr. Katch Koch): How does 7:30 sound?

Mr. Hampton: That's better.

The Chair: Committee members are invited to present themselves at Union Station at 7:30 a.m. for a 7:50 a.m. departure.

Unless there's any further business—yes, Mr. Barrett?

Mr. Barrett: Perhaps a point of order, Mr. Chair: I've been subbed on this committee today, so I'm not familiar with the protocol. I do wish to put forward a motion, essentially, that this committee consider keeping the Nanticoke generating station open. Would I write this up at this time, or is this done during clause-by-clause?

The Chair: I presume this would be presented during clause-by-clause, probably as a written motion, certainly.

Seeing no further business, this committee is adjourned until Chatham, Ontario.

The committee adjourned at 1518.

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**Standing committee on
justice policy**

**Comité permanent
de la justice**

Energy Conservation
Responsibility
Act, 2006

Loi de 2006 sur la responsabilité
en matière de conservation
de l'énergie

Chair: Shafiq Qaadri
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 8 February 2006

Mercredi 8 février 2006

The committee met at 1300 at the Wheels Inn, Chatham.

ENERGY CONSERVATION
RESPONSIBILITY
ACT, 2006LOI DE 2006 SUR LA RESPONSABILITÉ
EN MATIÈRE DE CONSERVATION
DE L'ÉNERGIE

Consideration of Bill 21, An Act to enact the Energy Conservation Leadership Act, 2006 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act / Projet de loi 21, Loi édictant la Loi de 2006 sur le leadership en matière de conservation de l'énergie et apportant des modifications à la Loi de 1998 sur l'électricité, à la Loi de 1998 sur la Commission de l'énergie de l'Ontario et à la Loi sur les offices de protection de la nature.

The Chair (Mr. Shafiq Qaadri): Ladies and gentlemen, I'd like to officially call this meeting of the standing committee on justice policy to order here in Chatham, Ontario, on day four to consider Bill 21.

With your permission, I might just introduce the participants. My name is Shafiq Qaadri, MPP for Etobicoke North. To my left, we have Mr. John Yakabuski of the official opposition, MPP for Renfrew-Nipissing-Pembroke. We have in the far corner Mr. Howard Hampton, MPP for Kenora-Rainy River as well as leader of the NDP. On this side, the government side, we have Ms. Jennifer Mossop for Stoney Creek, Mr. Jeff Leal for Peterborough, Mr. Kevin Flynn for Oakville, Mr. Bruce Crozier for Essex and Mr. Jim Brownell for Stormont-Dundas-Charlottenburgh.

CHATHAM-KENT HYDRO LTD.

The Chair: I will now invite our first of the presenter of the afternoon, Mr. David Kenney, president of Chatham-Kent Hydro. Mr. Kenney, just to inform you, you'll have 20 minutes in which to make your presentation. Let's say if you go 15 minutes, if there is time remaining afterward, we'll distribute that evenly amongst the parties for questions and comments. I would invite you to begin now.

Mr. Dave Kenney: I am Dave Kenney and I am the president of Chatham-Kent Hydro. I will be speaking

with you today on behalf of Chatham-Kent Hydro. Attending with me, I might add, are Mr. Ray Payne, who's sitting over here—he's the CEO of Chatham-Kent Energy—and Mr. Jim Hogan, who is the CFO of Chatham-Kent Energy.

I appreciate the opportunity to make a presentation to the committee on behalf of Chatham-Kent Hydro regarding the Energy Conservation Responsibility Act. I'm going to focus my comments today on the sections of Bill 21 referring to smart meters and the amendments to the Electricity Act, 1998.

A bit of history: Chatham-Kent Hydro was incorporated on October 1, 2000, and is the local electricity distribution company, serving approximately 32,000 customers within the municipality of Chatham-Kent. Chatham-Kent Hydro is one of three subsidiary companies of Chatham Kent Energy, which is 100% owned by the municipality of Chatham-Kent.

In early 2004, the Minister of Energy established a commitment to smart meters, with the goal to use smart meters as a tool to reduce the demand for electricity during peak energy consumption periods. The former Minister of Energy, the Honourable Dwight Duncan, is quoted as saying, "The government of Ontario's vision is to redesign our energy sector to reliably and affordably deliver the power that Ontario's homes and businesses require, and to do so in a way that does not threaten our environment."

Chatham-Kent Hydro thus began to research consumption habits of consumers and found studies that concluded that simply educating consumers on their energy use habits and more efficient energy products would cause consumers to reduce consumption by 5% to 10%. Compounding this with providing price incentives to shift or curb their energy use will assist the province in achieving the targets required to meet their generation initiatives.

Chatham-Kent Hydro also began to research smart meter technologies and strongly believes that providing customers with a smart meter will also provide them with a tool they can use to conserve energy and shift demand to off-peak times. The smart meter also has to be integrated with an in-home visual display so that the customer can access their own usage patterns and see the benefits in changes to those habits.

Chatham-Kent Hydro established several key principles prior to the selection of a smart meter product, including:

—Look beyond the meter for cost recovery. We knew that whatever we chose must provide other efficiencies—in power outage, notifications and things like that;

—We wanted to minimize stranding of assets. We have over \$2 million in metering assets, so we wanted to find a product which would reuse those assets rather than throw them away;

—Ensure the system is not proprietary;

—Establish openness with other existing systems;

—It must be flexible and robust for future opportunities and expansions; and

—It must be less than the costs being publicized, which at the time and still today are publicized in the \$4 per month per customer range for a smart meters. We set a target of less than \$2 per month; that was our goal.

After an extensive process, Chatham-Kent Hydro selected the Tantalus TUNet system for our smart meter pilot program. Chatham-Kent Hydro deployed a 1,000-meter residential smart meter pilot using the retrofit product and a 220-MHz communication technology from Tantalus System Corp. of British Columbia. This is the first pilot of its kind in Canada, and has proven to be an efficient way to install and operate a smart meter system. The interface was also completed to our Harris customer information system, and Chatham-Kent Hydro is able to produce a time-of-use bill for our smart meter customers.

An energy conservation module has also been added to the billing system, which will enable our customers to access their energy consumption information via the Internet. Not only will it provide previous-day hourly consumption data to customers, but it also provides tools to help them manage their energy use.

Our smart meter wireless infrastructure is also capable of reading other utilities' meters. A pilot is also being considered in the near future to partner with the local public utilities commission to interface to read some of their water meters, to integrate them into the system.

The most exciting part of our smart meter system is the cost. Our goal was to ensure that long-term operating costs are in an acceptable range, and our target was to be significantly lower than the \$4 per meter quoted throughout the province. We took the approach to avoid the use of expensive landlines or phone lines for communication, and we chose to retrofit meters rather than replace them. Upon completion of the installation of our 1,000 meters and communication infrastructure and the interface to the billing system, the firm of Deloitte Inc. was contracted to examine and validate our results. They were to assess our costs and cost estimates, validate our assumptions and conclusions and report their findings.

Deloitte's findings are that the monthly cost for a completed smart meter deployment by Chatham-Kent Hydro is \$1.29 per month per customer. Deloitte also stated in their report that the Chatham-Kent Hydro smart meter initiative would also likely result in an incremental monthly customer charge between \$1.20 and \$1.40 per customer per month. This cost includes efficiency gains that will result from the automated meter reading etc. Our goal to be less than \$4 has been realized, and we believe

that as customers are educated to use energy in low-price periods, the low cost of smart meters in Chatham-Kent will easily be transferred to a savings for the customers.

The progress a local distribution company like Chatham-Kent Hydro has made in smart meters is an example of what small and midsize distributors with low overheads and no bureaucracy can accomplish.

In schedule B of Bill 21, the smart meter entity is introduced. The smart meter entity is a new corporation that will, as stated in article 53.8, plan, implement and, on an ongoing basis, oversee, administer and deliver any part of the smart metering initiative and, if so authorized, have exclusive authority to conduct these activities. Bill 21 goes on to give the smart meter entity the authority to store the customer data and own and operate the communication systems.

Chatham-Kent Hydro supports the government's smart meter initiatives and conservation efforts, and has demonstrated this by being a leader in the province in smart meter deployment. What we have difficulty supporting is an additional corporation to manage the smart meter deployment and manage the customer data and communication system. We believe this will result in additional costs and unnecessary bureaucracy. The smart meter entity could be an added cost to the ratepayers of electricity in Ontario. The smart meter entity may also continue to delay the deployment of smart meters.

The government has challenged the electricity stakeholders to install a smart meter on every home and business by 2010. Some of us have stepped up to the challenge, and Chatham-Kent Hydro is definitely ready.

Chatham-Kent Hydro has demonstrated that progressive local distribution companies are fully capable of deploying smart meters along with any other core electrical distribution function. We believe any cost greater than \$1.29 per month per customer for Chatham-Kent for smart meters will be due to unnecessary third-party bureaucracy.

Chatham-Kent Hydro thanks the committee for the opportunity to make this presentation and respectfully requests that the government reconsider the need for a smart meter entity.

The Chair: Thank you very much, Mr. Kenney. You've left a lot of generous time for us for questions. I would invite the official opposition to begin. We have about four minutes or so per party. Mr. Yakabuski.

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Mr. John Yakabuski (Renfrew-Nipissing-Pembroke): Thank you very much for your presentation. A couple of questions on your pilot project—and I apologize if the answers are in here. Sometimes we read ahead and sometimes we miss things.

On the cost of your metering program, \$1.20 to \$1.40—I see the \$1.29—is that the administration, or does that include the capital costs for the meters themselves?

Mr. Kenney: Yes, that includes the capital costs of the meters and the operating costs—the maintenance of

the meters, the communication cost, the storage of data cost. That's the complete system.

Mr. Yakabuski: So if any smart meter program takes more than that to operate it, then somebody's doing something wrong, is what you're saying?

Mr. Kenney: For Chatham-Kent, it works fine. If it's much greater than that, we feel it's not necessary, and we've proven that with this pilot.

Mr. Yakabuski: When you chose your—it was 1,000 meters?

Mr. Kenney: That's correct.

Mr. Yakabuski: Was that done on a random basis? How did you pick the 1,000 installations? Is there anything that you have as far as results? Because how you choose them is important. If they're cherry-picked, if you want to call it that, then you can show what you want to show, whether they're the best savings or worst savings, whatever. How did you pick them, and have you got some data for the reductions in consumption?

Mr. Kenney: We have a service territory that stretches 2,400 square kilometres in Chatham-Kent. Why we needed 1,000 is so we could cover all that territory. So we chose meters at the far ends of the territory to ensure our communication system—which is wireless; it communicates from one tower in Chatham; that's it—so we had to make sure we hit all those pockets where we may have some experience and difficulties with communication. We had a 0.2% communication failure rate. It was very minor. That's about 10 or 12 meters which acted up on us. Those were fixed by raising the modules out in the field and things like that.

Mr. Yakabuski: As far as any data on consumption reductions, have you got that?

Mr. Kenney: Yes, we have data for all those meters on an interval basis, on a time-of-use basis, stored right now in our system.

Mr. Yakabuski: Can you give us a ballpark as to what those figures—

Mr. Kenney: What the figures are telling us is, for example, for an electrically heated home in Chatham-Kent that is on a smart meter, the cost is reduced by approximately 5% without that customer doing anything, because the electric heat—the time-of-use rates, we're not yet able to use them, but we take them and compare their existing charge to if they were on a time-of-use rate. For example, an electrically heated home would see a reduction of about 5% of their bill by doing nothing.

Mr. Yakabuski: Whether smart meters change any behaviour, by having the variable pricings throughout the day, there will be a savings to someone on electric heat of about 5%, is what you're saying.

Mr. Kenney: Yes. To a customer of electric heat, by using a smart meter and time-of-use rates, they will see a savings of 5% without doing anything. So a customer who really tries can easily save 10% to 15%.

Mr. Yakabuski: Well, I suppose, if they're in a position to make changes, and that's my next question. We had a gentleman here yesterday—not here; in our last location—talking about how there is no fat to cut in his

electricity bill. He produced a copy of his bill, which was very low. When we're talking about a mandatory program, and some estimates on these meters could go as high as \$8 a month—not in your experience, but—

The Chair: Thank you, Mr. Yakabuski. I will need to move on. I offer the floor to Mr. Hampton of the NDP.

Mr. Howard Hampton (Kenora-Rainy River): I'm interested in your comments on the smart meter entity. I think you're making the case that municipal electrical distributors such as your own are equipped. You know your market, you know your population, etc. So you're able to deliver this, and you're able to deliver it, as your information shows, efficiently or at least cost-effectively. So why do you think the government is interested in another large entity called a smart meter entity, which will be a very powerful body? I don't know if you've gone through all of the power that it would have and all the power the minister would have to give it more authority. What's the interest in creating this large body, do you think?

Mr. Kenney: I don't want to make assumptions. I believe procurement of materials could be part of their reason; storage of data. Some seem concerned about the volumes of data that smart meters will create and who's going to store that. We've done testing on data storage and it's not an issue for us to store up to seven years of data of our customers. We think that some of those concerns aren't really justified.

Procurement, supply: We've checked with our suppliers. In our case, we can get the material we need. So we think those are some of the reasons, and maybe the fact that deployment is to hit 2010—if LDCs don't get started now, that's going to be a hard target to hit. That's why we've taken this initiative.

Mr. Hampton: The other thing that interests me about your submission is that you point out that when you installed your system, you were thinking outside the box; you were thinking in terms of other opportunities, whether it be water billing etc. So I want you to speculate here. Could it be that what the government really has in mind is creating a commercial entity that wouldn't just be aimed at electricity use but would be aimed potentially at a lot of other consumer products?

This will be a very powerful agency. We had the Pembina Institute come and say that they were really nonplussed that there was no privacy protection here, because the information you'd have through smart meters would tell you when somebody potentially left their home in the morning, when they got home, when there was no one at home. In other words, there's a considerable amount of information here that could be used for all kinds of commercial and potentially non-commercial uses.

Do you think there needs to be some protection here of people's privacy? And does it concern you at all that this kind of very powerful body would be created?

Mr. Kenney: As long as the systems are secure, I think information can be protected, whether it is a central body or not. We use EBT processes now to send data to

retailers, and they're protected. I'm not overly concerned about that. I'm more concerned with the fact that we feel we're best to deploy the meters because we know our customers, we know our issues, we know where the technical issues will come up and things like that. So we're not really concerned about that issue.

The Chair: We'll move now to the government side, beginning with Mr. Crozier.

Mr. Bruce Crozier (Essex): Thank you, Mr. Kenney, for your presentation. I'm struck by the fact that you've said here that this is the first pilot of its kind in Canada and it's proven to be an efficient way to install and operate smart meters. With the program that you carried out, the test that you carried out, I take it that Chatham-Kent Hydro is anxious to get on with this, notwithstanding some of the suggestions you have where the bill might be amended. I take it you're quite anxious to get on with this and you'd like to be one of the first ones up to bat, eh?

Mr. Kenney: We filed with the Ontario Energy Board in our 2006 rate submission to deploy our smart meters, starting in April of this year. We feel we have to get on with it, because to hit 2010 and to spread not only the cost but the workload for our staff and everything else—that's the time we need to get them installed. We feel there's nothing left for us to test. We're ready to go ahead and start installing smart meters. Our suppliers are lined up. There's really nothing holding us back now.

Mr. Crozier: And if this bill were to be passed, then perhaps the parliamentary assistant to the minister could make sure that happens. You may have some comment in that respect.

The Chair: Mr. Leal.

Mr. Jeff Leal (Peterborough): Thanks very much, Mr. Chairman. Through you to Mr. Kenney, I really appreciate your presentation today. You've certainly provided a lot of analysis—very helpful—on your pilot project. It gets rid of some of the myths that have been out there about smart meters.

I would ask, sir, if you could provide—Deloitte provided a third-party analysis on your pilot project. If you'd be so kind, could we get a copy of that analysis and could you provide it to Mr. Richmond, the research officer, because I think it should be part of our package we get when we finish our deliberations here.

My colleague Ms. Mossop would like to ask you a question.

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Ms. Jennifer F. Mossop (Stoney Creek): Thank you very much for your presentation. I was curious: You were talking about the in-home monitor. Can you describe that? We had some discussion around that previously from some other presenters too.

Mr. Kenney: Currently, it's an Internet-based module and the customer can access their billing information from the previous day and look at what their consumption was during that day. It'll also tell them what the prices were during those hours. Also, it offers them a module called a DSM, where they can actually profile

their own appliances. They can input data and it can tell them what appliances they should replace to get more efficient appliances and what that will do to their load. They can use those data to help them purchase more efficient equipment and things like that.

Ms. Mossop: Since we're in a technological age, with technological generations right now, we've been talking on the road about the culture of waste that we're in, while we're trying to foster a culture of conservation. I'm wondering if you can extrapolate a little bit about the educational value that Internet tool might have for children in the family or maybe even in schools.

Mr. Kenney: We actually have a school program right now. We're going to every grade 5 class and we're introducing them to smart meters and conservation and things like that. We have every school in Chatham-Kent. We're about a third—

The Chair: Thank you, Mr. Kenney. I'd like to thank you, on behalf of the committee, for your written submission and for your presence here today.

WIREBURY CONNECTIONS INC.

The Chair: I'd now like to welcome our next presenter, Mr. Rick Rakus, general manager and chief operating officer of Wirebury Connections. You've just seen the protocol. There are 20 minutes in which to make the presentation, with the time remaining to be distributed for questions and comments. I invite you to begin now.

Mr. Rick Rakus: Good afternoon. My name is Rick Rakus, and I am with Wirebury Connections. Wirebury Connections thanks the committee for the opportunity to present our comments on Bill 21 and our support of the government's initiative to take a leadership role in creating a conservation culture in Ontario.

Wirebury would like to share with the committee its experience with smart metering in the multi-unit residential market. We'll be speaking to a number of slides that I believe have been distributed to the committee members.

Wirebury supports the government's conservation initiatives, and has found there are significant electricity conservation and demand-response benefits that can be realized from sub-metering, with smart meters, the apartment and condominium markets.

Wirebury Connections Inc. is a leader in smart metering and sub-metering multi-unit residential buildings, and is owned by Enbridge and OZZ Corp. We have approximately 4,000 smart meters installed in condominiums and apartments, and proposals with interested property owners, property managers and developers for an additional 25,000 units that we're working on. Our customers have access to their electricity profiles to see their peak usage and how they can shift the use of their appliances to their benefit; for example, using their dishwasher later in the evening. Wirebury has the capability to rapidly scale up and implement anywhere between 100,000 to 500,000 smart meters in the multi-unit residential market

to help the government achieve its target of 800,000 smart meters by 2007.

The benefits of sub-metering: With over 950,000 residential units not accountable for their electricity, we believe there are significant conservation benefits to be realized. We believe that the multi-residential apartment and condominium market should be pursued as the government works toward its goal of implementing smart meters and smart pricing in Ontario. We have seen significant reductions in electricity consumption, and estimate that converting all multi-unit residential buildings to individual smart meters can reduce Ontario's peak demand by anywhere between 190 to 380 megawatts—enough to offset two years of the IESO's forecast growth in demand for Ontario.

Consumers will take custody not only of their electricity costs, but will directly receive the benefits of their conservation efforts. Our multi-residential customers want and expect the same access to retail markets in time-of-use pricing as others. Smart metering this market will eliminate the creation of a two-tier electricity market or two-tier access to electricity pricing and services available in the marketplace.

I would like to briefly describe a couple of case studies that I put before the committee.

The first involves an apartment building. The benefits, I think, of sub-metering are proven. Our case study of the two apartment buildings shows customers who are direct-billed for electricity use can reduce their use by 40% to 50% over those who are non-direct-billed. In these buildings, consumption varies dramatically, anywhere from 250 kilowatt hours to upwards of 1,200 kilowatt hours. The graph I have handed out as part of the package shows the difference in consumption patterns between those customers who are direct-billed and those who aren't billed or pay their electricity through their rent. The graph highlights that.

The second case study I'd like to point out is a condominium project that we have also completed and have had operating for a year. It's a 725-unit condominium project. The graphs that are attached to that show the significant variances in consumption for similar-sized units. Consumption varies, as seen in the two graphs, anywhere from 242 kilowatt hours to upwards of 968 kilowatt hours, again highlighting the opportunity to conserve and the dramatic difference in consumption and, more importantly, peak hourly usage between similar-sized units. The graphs you see in the package are the actual energy profiles that our two customers see. These are two of our customers' actual usage for that time period.

We have also looked at the impact of smart pricing, or time-of-use pricing, for this project and have identified that 62% of the residents in the building would be better off under the new proposed time-of-use pricing that will come into play in May over the current five-cent regulated price plan mechanisms.

The sub-metering industry is ready to implement. I should point out that we are just one of the sub-metering

companies operating in this competitive marketplace, and you have heard from some of the others in the last few days. We have the flexibility and capability to deliver smart meters in this unique market.

For our sector to contribute to the goals of Bill 21, clear direction on the smart meter initiative is required.

Wirebury respectfully recommends that the government expand the smart meter initiative to include multi-residential buildings, targeting 90% smart meter installations by 2010, similar to the other marketplace.

We would recommend that the government direct the OEB to implement licensing of sub-meters by April of this year to allow sub-meterers to offer our customers retail access and other service offerings.

We would recommend respectfully that the government direct the chief energy conservation officer of the province to broaden the eligibility for low-cost financing to include the multi-residential sector and target specific CDM programs to this marketplace.

We recommend that the government direct the Ontario Power Authority to include the significant benefits of sub-metering in its overall resource planning framework.

We would suggest that the government direct all new multi-residential buildings to incorporate individual smart metering systems as of today.

We would recommend that the government use an approach to ensure that households in assisted housing units receive subsidies that recognize both rent and energy costs.

In summary, sub-metering can support Bill 21's objectives. I think it's a proven approach in the multi-unit residential marketplace. There are a number of companies that are ready to rapidly implement smart meters in this particular market sector. We can achieve at least a 20% reduction in electricity use with significant benefit, particularly around the greater Toronto area, in some of the transmission and distribution constraints. I believe it will introduce more people in Ontario to the conservation culture. But government action and direction on smart metering is needed to facilitate conservation and demand response in this market.

The Chair: Thank you, Mr. Rakus. We'll begin with the New Democratic Party. Mr. Hampton, about four and a half minutes.

Mr. Hampton: Chatham-Kent Hydro was kind enough to share with us the study and results of their pilot project. Do you have similar data?

Mr. Rakus: The data we have, Mr. Hampton, are what we used in the graph. We can provide additional data on our projects, if required.

1330

Mr. Hampton: I'm interested in a couple of particular things. In terms of the apartment buildings, do you know if they used electric heat or not?

Mr. Rakus: They were not electrically heated.

Mr. Hampton: Okay. Do you know when the buildings were built?

Mr. Rakus: These buildings are in Scarborough. I'm going to guess they were probably built in the 1960s. I

would characterize the area that they're in as not a high-rent area of Scarborough. In fact, there are a number of units within the building that are social housing units and subsidized.

Mr. Hampton: Do you know, roughly, the kind of insulation characteristics—energy-efficient windows etc.—the buildings would have had?

Mr. Rakus: Not specifically this building.

Mr. Hampton: Do you know if they had central air or individual air conditioning?

Mr. Rakus: Not central air, given the age of the buildings. I don't know if there are individual window air conditioners or anything else in this market.

Mr. Hampton: Can you tell us anything about the age or the energy-efficiency characteristics of the appliances?

Mr. Rakus: Actually, not specifically, but in working with the property manager in this building, she has been incenting her tenants to take custody of their own electricity and has offered up the installation of new, higher-efficiency appliances in this project as an incentive. So working between the individual metering of the units and doing her own things regarding energy conservation initiatives, they kind of work hand in hand.

Mr. Hampton: Finally, how long was your test conducted?

Mr. Rakus: This apartment building has been in operation for more than a year, and the condominium project that I've also put in the package before the committee has also been operational for over a year.

Mr. Hampton: If you could provide us with that kind of information, with the questions I've asked, that would be helpful.

Mr. Rakus: Yes.

Mr. Hampton: I just want to ask you some questions about your recommendations. I've reviewed the data from California; in fact, we've had it presented by a couple of groups. California saves about 12,000 megawatts annually now. That's how much they've reduced their electricity consumption. When they break it out, 2,000 megawatts is saved through essentially mandating efficient appliances. You have to buy energy-efficient appliances. About 4,000 is mandated by changes to the building code. In other words, you can't construct buildings in California now that aren't well insulated and don't have energy efficiency in mind. Yet I'm struck that your recommendations—you make some recommendations about how we ought to proceed. It would seem to me to be one of the basic things, if we're really serious about this, that we insist on energy-efficient appliances, that we insist that the building code be up to date in terms of energy efficiency.

Mr. Rakus: I would agree with what you're saying and would support those initiatives as well. What we're suggesting is that there is a rather large opportunity to reduce consumption and demand in the province through sub-metering, in addition to some of the things that you talked about. One of my comments or recommendations is that any new building should be individually metered or sub-metered or smart-metered, along with any other

changes to the building code. So I think one works hand in hand with the other.

When people become more cognizant of what their costs are, their expectations for when they move into a building will make them demand things like high energy-efficient appliances and what kind of windows there are, because it is a competitive rental marketplace.

Mr. Hampton: I'm told that the most inefficient buildings are those populated by low-income people. That's part of the problem. We've had a lot of tenants' groups come to us and say, "Look, the problem isn't the person. This is part of the problem. They don't control the fact there's bad insulation. They don't control the fact the windows leak air. You don't want to stand beside them in the winter. You might catch pneumonia. They don't control the fact that appliances—"

The Chair: Thank you, Mr. Hampton. We'll now proceed to the government side.

Mr. Leal: Thank you, Mr. Rakus, for your presentation today. An issue that keeps cropping is protection of privacy of the information. A smart meter entity or another entity is compiling a lot of very detailed information that potentially could be of use to others. Do you have any thoughts on how we might draft an amendment to bring into this bill to protect privacy?

Mr. Rakus: I appreciate the privacy issues. In fact, we do aggregate information, as I've done today with some of the graphs I've given you. We protect our customers' privacy, as required.

Maybe I can relate back to my own experience of a number of years working within Enbridge, Mr. Leal, and the fact that there's been an affiliate code set up between regulated entities and non-regulated affiliates on the sharing of information. The smart meter entity as proposed or drafted in Bill 21 has some value, I think, in trying to incorporate large systems and efficiencies with that. I think there are arrangements that can be made through contracts and affiliate code relationships that can protect, and it's been proven in the marketplace, particularly in the gas industry, and I think in the electricity industry as well, with retailers and marketers working with the regulated LDCs.

Mr. Leal: My colleague Jennifer Mossop would like to ask you a question.

Ms. Mossop: There's a lot of discussion that we've had around the value of the smart meter, as you've probably already heard. We heard the cost considerations of installing these meters and what kind of benefit you're going to get back in terms of cost savings or even in energy savings.

One of the things that was discussed was that when water meters were first talked about being installed in people's homes, there was a great push back at the cost of that, the administration and all the rest, yet some jurisdictions immediately realized a 75% drop in water usage. I'm just asking you, do you see the smart meter as a bit of a refinement of general use? Are we advancing in these things now?

Mr. Rakus: I think the smart meter technology opens a lot of avenues to the public and to consumers—access

to time-of-use pricing that I mentioned, some of the benefits. I think there's a public-interest perspective of creating a conservation culture here in Ontario. The same thing applies with smart metering. Whether it's a smart electric meter or a smart water meter, I think it will drive the conservation culture.

Just on your point, we in fact have a couple of condominium projects underway where the developer wants to meter individually the water in the building, because there is a growing concern now about water conservation in addition to electricity conservation, which I truly believe supports the conservation culture we're trying to create in this province.

Ms. Mossop: Yes, I know. I have concerns when I see people watering their driveways. I'm not sure why they do that.

There is a culture of conservation that we need to foster in a huge way. We've heard from many people who have come from different parts of the world who are way ahead of us on this who say that we really live in a culture of waste and that we need to advance this. I just want to get the sense—you've already talked about it a little bit—that you're getting in your pilot projects. Obviously, you saw some benefits with individual units, but there is concern around the landlords. Does this incent landlords in some way, because they're still responsible for the common areas, are they not?

Mr. Rakus: That's correct. They will still pay the bill for the common area. I think it does incent them. I think you've probably heard over the last few days of the soft rental market and some of the things associated with that. I believe that if you have every building in Ontario smart-metered, if you're a tenant, first of all, you're going to ask, "What's your average electricity usage for this one-bedroom apartment?" So I'm going to shop around one-bedroom apartments, building to building and that sort of thing.

I think people are aware. In fact, we have two customers in one of our condominium projects who moved from a bulk-metered building specifically to this building, which is individually metered, because they were tired of cross-subsidizing some of the other tenants. To put it in perspective, I think we have to create a conservation culture but get away from the aspect of what we may be referring to as "free electricity." If you drive along Eglinton Avenue in Toronto—

The Chair: Thank you, Mr. Rakus, and thanks to you as well, Ms. Mossop. We'll now move to the official opposition.

Mr. Yakabuski: Thank you, Mr. Rakus. No, we're not done with you yet.

Mr. Rakus: Sorry.

Mr. Yakabuski: Thank you for your presentation. You talked about a 20% reduction in buildings where there would be sub-metering. We would have that, whether we had smart metering or not, if we had sub-metering.

Mr. Rakus: That's correct.

Mr. Yakabuski: So we're talking about two different issues here, in a sense. Conservation would be advanced,

in your opinion, by sub-metering all multi-residential apartment buildings that are currently on a bulk meter system.

Mr. Rakus: That's correct. If I could expand on my answer a little bit, where I think you're going with this is that individually metering units to make people accountable has some benefits. I'll call it a dumb meter for today, if I might. What the smart metering technology does is give tenants—you can start charging customers differently, or directly, for their usage, so you can be creative on the commodity pricing and even going further with time-of-use distribution rates or charges so that people really do benefit when they shift the use of their total appliances to an off-peak period. So the smart metering technology allows even further benefits from a conservation and a demand-response perspective, in addition to what I will call a dumb meter.

1340

Mr. Yakabuski: But the point is that if people are paying for their electricity they will be far more conscious of the electricity they use.

Mr. Rakus: Absolutely.

Mr. Yakabuski: They're paying for it and they are accountable for it.

Mr. Rakus: That's correct.

Mr. Yakabuski: You, yourself, and Chatham-Kent Hydro mentioned a 5% reduction immediately, just based on the variable pricing—the fact that there's different pricing at different times of day. The average person would see a 5% reduction in their hydro bill—not in their usage; their hydro bill—based on the prices and the normal time of use.

Given that and that the government is very positive about smart metering, in the cases where people recognize that there are improvements to be made—if it's good, they're going to jump on it immediately—we're brought to whether this should be compulsory or voluntary. For example, I started to speak about the gentleman here yesterday with a very small hydro bill. There is no savings for this person by having a smart meter. In fact, there's going to be a cost to him because he's going to be paying the charge for the meter every month. If the program is great, and the government says it is, and it's bound to work, will anybody who is concerned about their dollars, the same people who are not paying for their hydro today, or anybody—the dollar has an effect on our actions. Wouldn't people simply jump onto this if it was in their best interest?

Mr. Rakus: I believe a portion of the marketplace would, but there is also a portion of the marketplace that would not. I'm going to speak specifically of our experience in the multi-unit residential market, both apartments and condos. I'll speak specifically of condominiums and our trying to break into that market, where there is—

Mr. Yakabuski: We're talking about smart metering now, not sub-metering.

Mr. Rakus: Let's talk about both. From the standpoint of individual metering, it's a challenge, because people who want to pay for their own and recognize the

benefits want to do that. There are a number of consumers who are being cross-subsidized, who really don't want to be individually metered. So the willing people will, but given the current issues around the Tenant Protection Act and the Condominium Act of getting a majority of people to agree, it's a bit of a challenge at times.

Smart metering and the things we see with the new time-of-use commodity pricing, the opportunities to offer more retail access, retail pricing through retailers and marketers, I think will come and help drive overall conservation even further and much quicker than just on a voluntary basis.

Mr. Yakabuski: But we can't have—

The Chair: Thank you, Mr. Yakabuski, and thank you as well, Mr. Rakus, for your deputation on behalf of Wirebury Connections, as well as the written printout of the PowerPoint slides. The committee appreciates both.

Mr. Hampton: Chair, I was wondering about the follow-up in terms of accessing the information that the gentleman indicated he'd provide to us.

The Chair: Sure. We'll direct legislative research to follow up with Mr. Rakus as necessary.

Mr. Rakus: Sorry, Mr. Chair. Just to be clear, it's to deal with the age of the buildings and whatnot, Mr. Hampton?

Mr. Hampton: That's right.

Mr. Rakus: Okay, great.

ELORA CENTRE FOR ENVIRONMENTAL EXCELLENCE

The Chair: We'll now invite our last presenter of the afternoon, Ms. Mary Jane Patterson, manager of the residential energy efficiency project for the Elora Centre for Environmental Excellence. Ms. Patterson, as you've likely seen, you have 20 minutes in which to make your presentation. Any time remaining will be distributed evenly amongst the parties afterward. I invite you to begin now.

Ms. Mary Jane Patterson: Thank you for the opportunity to speak this afternoon. I manage a project for the Elora Centre for Environmental Excellence which is REEP, the residential energy efficiency project, in Waterloo region. The Elora Centre provides EnerGuide for Houses evaluations throughout southwestern Ontario, and that's why we chose this location today. The Elora Centre is a registered charity, a member of Green Communities Canada and a leader in community-based environmental projects in urban and rural communities.

We are pleased to support Ontario's Bill 21, the Energy Conservation Responsibility Act. As a provider of home energy evaluations for the past seven years, we have seen the benefits of improving the energy efficiency of buildings for the homeowner, for the community and for the economy. We congratulate the province for recognizing the potential for energy savings and community health that lie with conservation, and for promoting it with this bill.

This submission focuses on schedule A, section 2, entitled "Mandatory conservation practices," which enables universal energy efficiency labelling of buildings. We heartily endorse this step. We also endorse the enhancements to this bill that have been put forward by our member association Green Communities Canada. Their recommendations are based on the collective experience of all of us members through many years of promoting energy efficiency in our communities. And since these recommendations have already been presented to this committee in Toronto, I won't repeat them here, but I include a summary of them in our written submission.

My purpose here today is to add the perspective of first-hand community experience just to reinforce those recommendations and our endorsement of this bill.

The Elora Centre is one of many local green communities that provide the EnerGuide for Houses home energy evaluations. These are third-party assessments of the structure of the home and of the potential for improving its energy efficiency. One of the recommendations that Green Communities Canada has put forward is that the province require or adopt EnerGuide for Houses as the labelling system for this section of the bill.

We would like to give you some community response or some anecdotal evidence to support mandatory labelling and the EnerGuide for Houses as the label that's used. We want to let you know that the community response to the service that we have been providing in southwestern Ontario has been overwhelmingly positive, and that's the EnerGuide for Houses home energy evaluations and labelling. Often a homeowner books an evaluation with us as soon as they move into their new home, and it provides a kind of introduction to that home for them. They are thrilled to receive the information we provide. We include a list of recommendations for improvement and they're cost-effectively prioritized so they know what to do first to get the best, most effective improvement. They trust us as providers of this service because we're a third party, we are not affiliated with any contractors who would do the work that we recommend, and we are non-profit.

Often our customers tell us they wish they had known the energy efficiency rating of the house before they bought it, just to know what they would be in for in terms of energy bills and what potential existed to reduce them.

The communities where we operate are strong supporters of this service. In Waterloo region, where I work, we have funding partnerships with three municipal governments, three electric utilities and with the natural gas utility. Our experience is that municipal governments are eager to improve the quality of local air, the quality of the local building stock and the quality of the lives of their citizens, and they want to know how we can make this service more widespread.

On many occasions we've been asked if there isn't some way to require a home energy evaluation and rating in every home. So there is a local feeling that mandatory

labelling of homes can and should be done. Besides the direct benefits of energy efficiency, we've seen many indirect benefits that arise from improving home energy efficiency and from providing expert energy advice to homeowners.

For example, we've had clients with homes that are too tightly sealed and not properly ventilated, and they are subject to health problems that come with mould and poor indoor air quality. We show them how to ventilate their home effectively, without wasting energy.

Recently, we had a customer in Waterloo region with a furnace that was leaking carbon monoxide into their house. They had just brought their new baby home for Christmas and they were unaware that they were in an unsafe living space until our evaluator pointed it out and recommended that they have their furnace serviced immediately.

Often people have the proper equipment but they don't know how to use it. They have a heat recovery ventilator system, for example, stuffed with socks because they felt there was a breeze coming in there, or they have a switch that operates it and they never knew what that switch did, so we show them what it's for and how to work it. Most of all, people are delighted with the amount of money they save on their energy bills after completing home energy retrofits.

In summary, home energy evaluations and ratings provide many benefits to Ontario citizens and communities and to the province's energy supplies. The member organizations of Green Communities Canada have a history of working in our communities. We have strong municipal support. We've been in thousands of houses already, and we're ready to work with you on the energy-saving measures that come from this bill. We look forward to making Ontario a more energy-efficient and healthier place to live. Thank you.

1350

The Chair: Thank you, Ms. Patterson. You've left a lot of generous time for questions. We'll begin with the government side, about four and a half minutes. Mr. Flynn.

Mr. Kevin Daniel Flynn (Oakville): Thank you, Ms. Patterson. Fortunately, I wasn't in Toronto, so I'm hearing this presentation for the first time. It sounds like a wonderful initiative. I'm just wondering, when you go into a home and you do the audit and you suggest the improvements for the retrofits, would you look at things like, do they have the right appliances? Is it that type of thing? What would a typical inspection entail?

Ms. Patterson: The EnerGuide for Houses specifically addresses home space heating and water heating. That's because it addresses the things that will not change, no matter who lives in that house, so we can give a label to that house that stays. That means you can go across the country and know by the label what kind of fix you're going to be in when you move into it and start paying the energy bills. That means that things like appliances are not included in the labelling of a house, because they come and go as people come and go with

the house. We try to address that separately with our own public education materials that we give to the homeowner at the time of the visit. We have pamphlets about Energy Star appliances, for example.

Mr. Flynn: And you would probably—I'm assuming this—advise them to, where possible, use their appliances in the off-peak hours.

Ms. Patterson: It is something that we're getting more conscious of. We are working now with local electric utilities to talk about ways to address electricity more specifically in these evaluations. We have put forward proposals to do exactly that: working with smart metering, for example; to have public education that enhances and maximizes the benefits by making people aware of what that meter means and how to make use of it in the most effective way.

Mr. Flynn: Now, do you think the ability of the homeowner to be able to control their costs with a smart meter would make your job easier in convincing them to perhaps do things in the evening and at night if possible?

Ms. Patterson: Money seems to be a real motivator. When we advertise our service, we talk about saving the environment and saving money. Saving money seems to hit home a little more.

The Chair: Mr. Brownell has a question.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): Well, I have to say that my colleague, Mr. Flynn, basically took my question.

Your presentation today certainly provided us with a lot of information regarding your organization's interest in introducing Ontarians to a culture of conservation, and I applaud you for that. You've really laid it out here. I really hadn't heard a whole lot about smart metering, your thoughts about smart metering etc. I just made a comment to my colleague, Mr. Flynn. Any further comments about that?

Ms. Patterson: What we know from things like community-based social marketing research is that public education is important, but it's not enough; it doesn't necessarily change our actions. Often we can be aware that we're doing the wrong thing—we think of ourselves as people who do the right thing—and yet we still do it.

It helps to have a financial incentive, that's for sure, and it helps to put the two together. We can see a real benefit from smart metering, especially when combined with public education that helps people to really understand why they're doing it and how to make the most of it. We are thinking of things like—I don't know, it sounds a bit odd—having a light that changes colour when you leave peak period and go into off-peak period that's in a really visible spot in your house so that you're just more conscious of that: "Okay, now I can do the laundry, and it will cost me less." That kind of thing.

The Chair: Ms. Mossop.

Ms. Mossop: Just following up on that line of questioning, I think your idea of having a light or some other gadget like that to notify people is actually quite a good idea.

There's some concern about whether or not the smart meter is necessary as part of this, but my sense is, more

and more, hearing from people, that the smart meter gives people the financial incentive, the information that they need. Also, it's because we are trying to create a culture of conservation and we are really trying to reach out to younger generations who've never had to really be responsible for their use of resources. They haven't been through a depression; they haven't been through a war. It's not that real to them, but technological gadgets truly talk to this generation in a big way.

Our concern is not just to prevent a blackout, but to create a culture of conservation so that we don't have to spend billions of dollars building more capacity into a system. Would you say that this is—

The Chair: I'll need to intervene there, so I apologize, but thank you, Ms. Mossop. We now move to the official opposition. Mr. Yakabuski.

Mr. Yakabuski: Thank you very much, Ms. Patterson, for your presentation today. You talked about energy audits or EnerGuide for Homes. That was the main thrust of your presentation. Then you talked about mainly being focused on the environmental heating and the water heating of the home. But you must also evaluate the windows and the insulation, given that it's a 3,500-watt electric water heater and a 140,000-BTU furnace or whatever, to determine how much that home is going to use regardless of who's in it, because the rest of it is by choice. The appliances used could be by choice, how much you light it is by choice, how many gadgets and stereos etc. are by choice. So you have a baseline to go by, right?

Ms. Patterson: Yes. That's correct.

Mr. Yakabuski: Of course, in the selling of a home today, those things have to be disclosed; it's part of the listing of the home. You have to disclose what your heating source is and you disclose what your water-heating source is. It's part of the listing agreements; people will have that information.

One of the questions I have is about upgrading those homes. You talked about the importance of energy retrofits. There is a housing market out there where the least energy-efficient homes, as they get an EnerGuide rating or whatever, are going to be selling for lower prices, because the market, being such, will dictate that. But the people who buy those homes will be the people of lower incomes, most likely, or someone who wants to spend the money to upgrade the home. But the lower-income people won't have the money to upgrade that home anyway. If they're able to somehow finance the home, they're probably the last people in the world who will have the money to take advantage of the opportunities that are there to retrofit the home. I'm not sure how that might affect low-income people with regard to their ability to reduce the energy use of that home, because they can't afford the retrofits.

The other thing I'd like to ask you is—and you can answer them together—you did talk about money being an important part of the equation, a motivator. Do you agree that in places like the GTA, where obviously the concentration is, or anywhere else, that submetering of apartments should be mandatory?

Ms. Patterson: If I may, I'll just start with the first comment that you made. I just went to look at a house on my street this week with the intention of possibly buying it. The real estate agent wasn't able to tell me what efficiency the furnace was, whether there was insulation or what type of windows there were. I don't find right now that there is an adequate level of disclosure at all about what you're in for when you move into a house.

Mr. Yakabuski: It's just the type of sources. They wouldn't be able to tell you the efficiencies, just the type of sources.

Ms. Patterson: Yes. You can find out what kind of heating it is.

Then you were asking about houses in the lower-income bracket. It is a concern. The federal government now has an incentive for people who make their homes more energy efficient. What we need to do is make it possible for people—and I think that's part of our recommendations here from Green Communities Canada—to make the initial investment that in the long run saves them much more money. The federal incentive helps to do that. Mandatory labelling, we hope, will also put that forward. If people realize what they're living in right now, maybe they'll make the effort to make a change before they sell the house.

It doesn't have to be taken all at one time. The kind of the things that we give in our recommendations can be a blueprint for the entire lifetime of that house. Whenever you're able to make a change, however small, it will have an impact, and you can continue to do those incrementally.

The Chair: We'll now move to the leader of the third party, Mr. Hampton.

Mr. Hampton: Thank you very much for your presentation. I wanted to ask you, how long have you been associated with Green Communities Canada?

Ms. Patterson: For four years.

Mr. Hampton: What struck me is that the central part of this government's energy conservation campaign, the part that they talk about all the time, is smart meters, smart meters, smart meters. Yet your presentation deals with what I think the meat in the sandwich really is: A smart meter doesn't save you electricity; it's not going to retrofit your home; it's not going to change the Building Code; and a smart meter by itself is not going to bring into place demand management incentives, which I think are all of the things we need. Certainly, that's the experience in California.

1400

California's experience with smart meters was actually fairly disappointing. In their pilot projects, they assumed they were going to reduce consumption by 500 megawatts. When they did the after-the-fact analysis, they found that it reduced consumption only by about 31 megawatts. That's all they could really identify. There were other factors that were responsible for the other changes in behaviour.

What I find interesting is point (b): "That the bill be strengthened to require mandatory universal labelling of

building energy performance.” What I find surprising is that the government’s had three years when it could have done that, yet it hasn’t been done.

Mr. Leal: Two.

Mr. Hampton: Well, you’re in your third year now, folks. Eighteen months from now, you’ve got to go back to the people.

Mr. Yakabuski: It seems longer.

Mr. Hampton: You’re associated with Green Communities Canada. Can you explain why something as elementary as that hasn’t been done?

Ms. Patterson: I can’t explain. Can I just say that we’re ready for it right now? We’re absolutely ready to roll it out.

Mr. Hampton: One of the things they found in California was that just by changing the building code, by requiring that commercial buildings and residential buildings had to be built according to fairly strict energy-efficiency standards, they estimate now that they save 4,000 megawatts a year just by having a very up-to-date energy-efficiency building code. Do you have any understanding why the government hasn’t done that already?

Ms. Patterson: I can tell you that, as an organization, our board and our evaluators together wrote a letter to our local MPP, who forwarded it to Dwight Duncan, and we would be glad to provide a copy for everyone here. In it, we put together all of the recommendations that we have, based on our experience in evaluating houses and hearing what people are asking for. We would be glad to provide that.

One of them is, why didn’t we make every house an R-2000 house when we built it? Another one was, bring back the PST rebate for energy-efficient appliances. People were really pleased with that when they had that.

Mr. Yakabuski: Wasn’t that a good one? That was great.

Ms. Patterson: Yes. So we’ve got a number of recommendations that we would be pleased to provide.

Mr. Hampton: I want to zero in on recommendation (f): “That Bill 21 recognize the need for support for

building owners to fulfill requirements specified in consequent regulations.” I assume by that you mean financial support.

Ms. Patterson: Financial support, things like—you know what? I have the original submission that explains it a little bit more.

Mr. Hampton: In relation to that, are you aware that in the province of Manitoba, someone can, after they’ve had an energy audit of their home—I understand Green Communities is quite active in Manitoba—get a \$5,000 low-interest loan to put in high-efficiency heating, to put in energy-efficient windows, to put in better insulation, and even to replace your major appliances, the always-on appliances like your refrigerator or your freezer? So there’s financial support for people to make the changes that—

The Chair: Thank you, Mr. Hampton. I’ll need to intervene there, and I’d like to thank you on behalf of the committee, Ms. Patterson, for your deputation on behalf of the Elora Centre for Environmental Excellence, as well as for your written submission. All is very much appreciated.

I’d like to advise committee members that we will, as you know, be adjourning tomorrow to Thunder Bay, Ontario, for the next day of hearings. As the clerk has already indicated, we’re due at a particular centre at 8 a.m. If you don’t have the exact address, you might want to get that from the clerk in order that you arrive on time at the exact place. The plane is, incidentally, scheduled to depart at 8 a.m.

Seeing no further business—

Mr. Hampton: And it will arrive at what time?

The Chair: And it will arrive at what time in Thunder Bay?

The Clerk of the Committee (Mr. Katch Koch): We’re scheduled to arrive into Thunder Bay at 11 a.m.

The Chair: Seeing no further business, this committee is adjourned.

The committee adjourned at 1405.

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Thursday 9 February 2006

**Journal
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Jeudi 9 février 2006

**Standing committee on
justice policy**

Energy Conservation
Responsibility
Act, 2006

**Comité permanent
de la justice**

Loi de 2006 sur la responsabilité
en matière de conservation
de l'énergie

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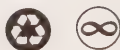
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 9 February 2006

Jeudi 9 février 2006

The committee met at 1302 in the Prince Arthur Waterfront Hotel and Suites, Thunder Bay.

ENERGY CONSERVATION
RESPONSIBILITY
ACT, 2006LOI DE 2006 SUR LA RESPONSABILITÉ
EN MATIÈRE DE CONSERVATION
DE L'ÉNERGIE

Consideration of Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act / Projet de loi 21, Loi édictant la Loi de 2005 sur le leadership en matière de conservation de l'énergie et apportant des modifications à la Loi de 1998 sur l'électricité, à la Loi de 1998 sur la Commission de l'énergie de l'Ontario et à la Loi sur les offices de protection de la nature.

The Chair (Mr. Shafiq Qadri): I'd like to call the standing committee on justice policy to order, please. As you know, we're here on day five in Thunder Bay, Ontario, for consideration of Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act.

Just before beginning, I thought I might introduce the participants to the audience. My name is Shafiq Qadri. I'm MPP for Etobicoke North and chair of the committee. To my left we have the members of the official opposition: Mr. John Yakabuski, MPP for Renfrew-Nipissing-Pembroke, as well as Mr. Norm Miller, MPP for Parry Sound-Muskoka. In the far corner, we have Mr. Howard Hampton, who is the MPP for Kenora-Rainy River as well as the leader of the third party, the NDP. On the government side, we have Mr. Michael Gravelle, MPP for Thunder Bay-Superior North, Mr. Jeff Leal for Peterborough, Mr. Kevin Flynn for Oakville, Mr. Bob Delaney from Mississauga West and Mr. Jim Brownell for Stormont-Dundas-Charlottenburgh.

TOWNSHIP OF ATIKOKAN

The Chair: I'd now like to invite our first presenter to come forward. That is Mr. Wilf Thorburn, chief executive officer of Atikokan Hydro, and entourage. Gentlemen, please be seated. I'll just advise you of the

protocol. You'll have 20 minutes sharp in which to make your entire presentation. If there's any time remaining—for example, let's say you go to 15 minutes—that remaining time will be distributed evenly amongst the parties for questions. I might respectfully just ask you to introduce yourselves, because these proceedings are recorded, they will be published and they do become part of the permanent record of the Legislature of Ontario. With that, I invite you to begin.

Mr. Wilf Thorburn: Thank you. As noted, my name is Wilf Thorburn, CEO of Atikokan Hydro. This is Warren Paulson, our CAO, and Mayor Dennis Brown. They're my support folks. If I get into any difficulty with the questions, they have the answers.

I would like to take this opportunity to really thank you for coming this distance. It's not often we get to speak to legislators, and it is appreciated when that can happen.

I'll kind of wander off doing my presentation. Our LDC does some things differently than a lot of LDCs, and that is, we co-operate a lot with our municipality and, where we can, we try to do things that are going to be for the common good, because the money comes out of the same wallet to pay for any services. So we try to join forces. That's why I'm presenting with the CAO and the mayor, and that is why some of this is more municipal than it is electrical.

I am the dinosaur making the presentation. We may as well get our identities straight. I'm in my 40th year in the electrical trade, so I've seen a lot of things come and go, and in my 16th year as manager of an LDC.

We, as representatives of Atikokan, take energy conservation and expenditures in general as very serious events. Most of the comments presented will be of a general nature and will hopefully lead to some changes in the legislation.

Unfortunately, the information on the Web was somewhat less than accurate, so my next paragraph doesn't really mean much. But I was glad to see that representatives of all three parties are here, because everybody has a responsibility for the mess we're in. My research indicated that at least two of the members were with the 35th Parliament, and those were MPP Witmer and MPP Kormos. That's important because of some things that the present Minister of Energy has said. MPP Hampton was with the 35th Parliament. I don't know about the rest of the people because I didn't do the research to that point.

I'd like to point out that while conservation and wise use of electricity are of paramount importance to us, we'd be ill-advised to waste our natural gas in very inefficient scenarios such as running generators. If the natural gas line ever gets to the Thunder Bay generating station, it will be the equivalent of heating 123,000 homes. You could heat 123,000 homes with the same amount of gas you're going to put through the generator. You can play with efficiencies to change that, but a significant amount of gas is going to go away from home heating.

During the month of January, the commodity portion of the gas bill increased from 29 cents to 40 cents per cubic meter. That's my gas bill. I just got it. This is just the beginning. As we speak, our customers are coming to us and looking to convert back to electric heat, because they realize that natural gas is in short supply. It's getting very expensive. It's going to be a Catch-22. If they have an old gas furnace, as opposed to replacing that, they're actively looking at going electric again. That's going to change the whole picture.

I'd like to point out that all parties have a responsibility to influence government policy. It's just not acceptable to point fingers and say, "We were left with a mess. We were left with a disaster." This is why I'd like you to listen to the members from the 35th Parliament, because a lot of the items that are being said today were said then. They may have been valid then, but they haven't been acted upon. We don't have any results to show from them. In the Minister of Energy's speech on February 3—at the back of the package you'll find pages 5 and 6 from her speech. These pages could have been taken from the 35th Parliament, from the energy policies of that day. They may be valid points and they may lead to a long-term kinder lifestyle, but they will not overcome the energy shortages we are about to encounter.

Energy conservation is certainly not to be taken lightly. It's important to realize early on that trying to make conservation prescriptive will be somewhat less successful than passing legislation to outlaw a SARS outbreak once it has occurred.

Some differences in the climatic regions of the province must be considered.

You will note a graph later on in the package that shows the consumption of three schools in two categories. The first set of data is from a new 20-room school built in 1999 to the most energy-efficient standards available. It's an R-2000 building. The second set of data is the combination of the consumption of two 10-room schools that the new one replaced. The 10-room schools were 1958 and 1963 vintage with single-pane windows. The new energy-efficient school uses 300% more energy than the two old schools used, and the explanation is very simple: The new building regulations prescribe the amount of outside air that must be introduced to a public building such as a school. The difference in energy displayed is only the electrical energy. I don't have access to the gas. The buildings are heated with gas, so that has probably increased as well.

Such examples will be even more widespread as we move forward. Our community is in need of major retrofit or replacement of several large buildings, including the town offices and the LDC garage building. You may be assured that energy efficiency will be at the top of our list, but please be aware that when adopting today's efficiency standards, being efficient and conserving energy will be at the opposite ends of the spectrum.

If you look at the pictures in appendix B, they clearly indicate that the present town hall is not energy-efficient and the North Star school is. On the town hall, you can see the ice built up on the roof. It's losing heat. On the North Star school, with the same slope of roof, that's not the case. The kilowatt hours for the town hall should be doubled, because it's only half the size. But if you double the inefficient town hall building, you're still using 50% of the energy that you'd be using in an efficient building, and that's something we have to really be aware of.

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This piece of legislation spends more effort on penalties and red tape than on offering any meaningful guidelines.

Energy tracking and targets will consume a significant amount of time and resources that will not contribute to the use of less energy. Our municipalities operate in a climatic area with a minus-37-degrees-Celsius outside design temperature. Toronto is minus 17. It may simply not be possible to reduce any further without damaging equipment or shutting entities down. Rationing should not be confused with conservation.

We are missing the need to evaluate what is achievable and then making a best effort at improvement. Even the evaluation will be an additional tax burden to gather the data, audit the buildings and processes, and then start a capital program to meet the recommendations that would be the outcome of the above process. Government loans are usually more time-consuming to acquire and far more costly to put in place than debentures or commercial bank loans.

Municipalities tend to direct their priorities to local matters. They do an excellent job of providing services and meeting provincial and federal mandates. An atmosphere of cooperation and guidelines will produce more beneficial results than prescriptive reporting that will only take away from other tasks and not result in desired savings. The bill should include a section to outline the tools that would be made available to municipalities and perhaps even to the general public. Such tools could include heat/cooling air quality calculators that would allow instant analysis of areas as they become problematic.

Municipalities have, over the years, demonstrated the value of such entities as LAS—Local Authority Services—a purchasing group from AMO. This is a service that is used to assist in common items, but each municipality must be allowed to make its purchases to suit its specific needs. Being prescriptive in purchasing is going to be really bad.

Ministry guidelines should be specific to climatic areas when it comes to energy costs. An office respon-

sible to the ministry set up in various areas of the province could produce recommendations and services that would help municipalities and the province as a whole. Building codes could be adjusted to ensure maximum gain for energy dollars spent. To adopt ASHRAE standards without climatic consideration is not wise. It would be better to design based on the building need, not on a generalization. We should revisit the gold medallion standard for homes as well as municipal buildings. We may get into that later if there's more time.

We're just going to flip past the other examples. They are more for information for the future. If you have questions, I'll take them, but I'd like to make a few comments on the smart meters portion of it.

There are a couple of significant points that must be made clear. The first is that the meter and collection of data are the cash register and heart of the LDC. As with climate, there are vast differences in topography and communication ability within the province.

The second point I wish to touch on is that the government has opted to determine how to install smart meters but has not investigated the actual benefit of smart meters to the consumer. The EDA has adopted the position that it's not its mandate to debate the decision. It must ensure the LDCs are kept whole and keep their traditional or expanded business roles. I feel I have a moral obligation to point out that the value of the meter to a residential customer has not been thoroughly investigated. The EDA, by the way, is the Electricity Distributors Association. I think they presented to you earlier.

The security, control and timely circulation of the data are of utmost concern. As noted by other presenters, a lot of the definitions are not yet finalized, yet the smart meter entity is contemplated as having extraordinary powers that can be daisy-chained by the Minister of Energy to have significant and not necessarily positive aspects to the LDC business. Most LDCs have done some investigating and some minor planning as to how they could accomplish the government's desire. There will be LDC-specific issues that will require specific solutions. A case in point is that we have one substation that has six customers, three of whom are seasonal. It's not declining, but it exists. It will take a 400-foot tower to do a wireless interrogation of these meters. Land lines would require significant upgrades if we're going to use a hard method of getting to them. This is going to be a different cost and perhaps will need a different approach than in a more populous subdivision. At the end of the day, the LDC must have absolute and unfettered access to the data. The smart meter entity should then be able to collect and do whatever it is directed to do with the data. If that's how it's going to happen, we have to have first access to it.

I realize that the government has floated \$200-per-meter costs. If smart metering is actually time-of-use metering, then this will be understated. My estimate would put the cost at closer to \$1,000 per meter by the time the dust settles. We have 1,700 customers, so the

cost will vary from \$340,000 to \$1.7 million. The book value of the LDC is \$2.1 million. If my estimates turn out to be accurate, we will have a cash register that is 80% of the total value of the existing LDC. If the government is correct, it will be 17%—still a very expensive cash register. This will lead to bridge financing issues that should perhaps be addressed in the bill. Cost recovery through rates only works if you have the working capital to fund the cost. It should be noted that the existing meters have a value of less than \$35 for residential settings.

Another item that seems to have escaped the analysis is how many people will be able to benefit from the smart metering database. I would estimate that over a third of the population in Ontario will not be able to access data from a smart meter installation if they want it. People in rural areas still on party lines will not have immediate access, nor will those without phones or computers. If part of the benefit is that people can find out what they used yesterday, then a significant number of people will be paying for a service they cannot use.

Since the government has gone down this path without a clear benefit analysis but rather under a request for implementation, the co-operation of all will be essential in order to have any chance of implementation.

Atikokan Hydro has done some preliminary investigation as to how we might install and facilitate the advancement if legislated to do so. We know the height of the tower required, because we've done that investigation.

Given the urgency of energy costs in the lives of all of our customers, one really has to question the motives of such a huge investment that will be borne by surviving customers for years to come. Many LDCs will not have the cash flow to purchase either the services from an SME or the portions that must remain the LDC's responsibility, and will either be required to raise rates in advance of the investment to be able to make the investment or will require bridge financing from the legislators. The shareholder is not in a position to provide the necessary cash, and the general economic condition of some LDCs will not permit commercial financing without, once again, significant rate increases.

I'd like to end it there and leave some time for questioning. People can go through the rest if they wish.

The Chair: Thank you, Mr. Thorburn. Absolutely. We have six minutes or so in total, and we'll begin with the official opposition. Mr. Yakubuski.

Mr. John Yakubuski (Renfrew-Nipissing-Pembroke): Thank you very much for your presentation today, gentlemen. It's good to see you again.

We have your submission on smart meters, and we may get to that in a minute, if we can, but I want to ask you a couple of questions. Today the government announced that they would continue with the cap on industrial electricity prices. After ignoring the plight of the north for two and a half years, they've been forced into some kind of action. But given that they're going to continue with the cap into 2008, they can't possibly have electricity at that price and continue with their ill-

thought-out coal policy. It's impossible. If we're going to be selling power at that price, we can't be selling it with natural-gas-produced power. It isn't feasible. Is it time for this government to put to rest their ill-thought-out coal policy and start cleaning up the coal plants instead of shutting them down?

Mr. Thorburn: Definitely. We have a moral responsibility as a society to look at the value that we've got in these plants. We've got \$750 million or \$800 million in the one at Atikokan; we've got I don't know what at this one. The ones at Lambton that we've invested in are some of the cleanest in the world. So we have to look at what we have, clean up what we have if it needs it, and then we should maybe look at exporting that technology to countries that don't have the advantages of the technology that we have.

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I believe it has been stated that the cost of producing from the coal plants is about 3.2 cents a kilowatt hour. This cap isn't all that good; it doesn't bring the price down to where it normally—well, perhaps they've changed it. If it's the existing global adjustment, it does help, but our industries are still suffering. We have to get back to using the affordable power that we have, even if it goes to 3.8 cents with pollution abatement equipment on it.

The Chair: Thank you, Mr. Yakubski. We'll now move to Mr. Hampton.

Mr. Howard Hampton (Kenora-Rainy River): I wanted to ask you first a question about the whole smart meters initiative, because what's very clear is that the government talks about energy efficiency and energy conservation. What this government essentially means is smart meters.

You've pointed out, I think, some very good practical things. One thing I'd like to ask you is this: In your customer area, how many people, percentage-wise, would you say have summertime air conditioning installed?

Mr. Thorburn: Some 15%, maybe moving towards 20%. It used to be about 10%, but it is creeping up a little bit. The minority of the population has central air.

Mr. Hampton: Okay. How many days in the summer would you say they use that?

Mr. Thorburn: I've had central air for a number of years and for a number of years it's never been turned on. Last summer it was probably on 20 or 25 days, but there have been many summers that I've never even needed to turn it on.

Mr. Hampton: What strikes me about the government's position here is that in northwestern Ontario we actually have an electricity surplus. Do you know what that electricity surplus is?

Mr. Thorburn: Yes. Well, it's getting bigger by the day. If you look at Kenora, it used to be a 65-meg load. They're now down to a 20-meg load. They've had an 80% conservation reduction.

Mr. Hampton: How did that happen?

Mr. Thorburn: When the paper mill went down, they ended up with 65 megs of spare power. We can generate

about 1,400 megs. You have to knock the co-gen off because Fort Frances can't afford to run it anymore. So knock 100 off that. So we can generate—

Mr. Hampton: What kind of co-gen is that?

Mr. Thorburn: It was a natural-gas-fired co-gen.

Mr. Hampton: They can't afford to run it as a co-gen.

Mr. Thorburn: They can't afford to run it as a co-gen on natural gas. They can't get a supply—

The Chair: Mr. Hampton, with regrets I'll have to move on to the next side, to the government, and that is Mr. Gravelle.

Mr. Michael Gravelle (Thunder Bay-Superior North): Welcome, Mr. Thorburn, Mr. Paulson and Mayor Brown. It's good to see you here. I, for one, am very pleased that the government announced an extension of the rate cap for Ontario Power Generation's large industrial customers. That's vital and it's something I was speaking about a couple of days ago, about how important it was to bring that stability to those customers. I know there's more that needs to be done and I'm hoping that will be coming forward shortly. I'm pleased about that.

But I'm curious, Mr. Thorburn. You were talking about the 35th Parliament, and I must admit, I want to be sure—is that the Parliament from 1990 to 1995?

Mr. Thorburn: Yes.

Mr. Gravelle: Mr. Hampton was a member of that.

Mr. Thorburn: Yes. Some of the members did get some flak for that.

Mr. Gravelle: But I was hoping you might expand a bit, because you had a clear point you wanted to make about that. There are some clear comparisons between what's happening now. Is it that the more things change, the more they stay the same, or—

Mr. Thorburn: That's about it. There were a lot of really good initiatives that came out of that Parliament, but the problem was that they didn't produce the results that people thought they would. That's why it was important to me to present the fact of the schools, with the high energy-efficiency building, and one that's really inefficient is much cheaper to operate. So conservation should have worked with the building code. It didn't.

The scary part is, if you look at pages 5 and 6 of the Minister of Energy's speech delivered on February 3, you'd almost swear that plagiarism was involved. It's almost word for word of what the policy was in the 35th Parliament. I think the people who had gone through that realized that they had some very good ideas, and there's nothing wrong with these ideas. We just shouldn't concentrate on them, because they're not going to produce the results that we need. If there's something that we should strive towards—it's motherhood and apple pie and it's something we really should strive towards: We've got to use less energy. We have to use it more efficiently, but conservation is not going to be the answer.

The Chair: Thank you, Mr. Gravelle.

Thank you as well, Mr. Thorburn and your colleagues Mr. Paulson and Mayor Brown, for your deputation on

behalf of Atikokan. We received your written submission and we thank you for that as well as your presence.

Mr. Thorburn: Again, thank you for coming. We appreciate seeing you.

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

The Chair: I would now like to invite our next presenter, Mr. Robert Huget, accompanied by Mr. Gary Bragnalo and Mr. Steve Boon.

A number of mentions have been made of the 35th Parliament. I'd like to advise members of the committee that we have in front of us a former legislator. Mr. Huget is the former MPP for Sarnia in the 35th Parliament from 1990 to 1995. We welcome you.

I would invite committee members to resume their seats in order that we might begin.

Mr. Bob Huget: I appear to have had an ability to clear the room in some way, shape or form. I don't know why that is.

The Chair: All right, Mr. Huget. Please begin.

Mr. Huget: Thank you, Mr. Chairman and members of the committee, for the opportunity to appear before you today on what indeed is a very important issue in the province of Ontario, to its industry, consumers and the like.

My name is Bob Huget, and I am administrative vice-president of the Ontario region of the Communications, Energy and Paperworkers Union of Canada, the CEP. I am joined today by Mr. Gary Bragnalo, president of CEP Local 39, and Steve Boon, president of CEP Local 40, both of Thunder Bay.

As our name certainly attests, CEP represents people who work in the oil, gas and petrochemical sectors, in telecommunications, in the media and in forest-based industries. We represent 150,000 members across Canada, some 50,000 of whom live and pay taxes and hydro bills right here in Ontario.

I want to go on the record with you that CEP has been a leading proponent of energy conservation. In fact, we have developed an extensive energy policy which, among other things:

- (1) supports implementation of the Kyoto accord;
- (2) calls for a reversal of the trend to put crucial energy delivery systems in private hands;
- (3) demands that electricity pricing and policy decisions remain in public hands and be determined in the broad public interest and not by so-called free market conditions;
- (4) proposes a renewed emphasis on conservation policy, including retrofit programs for buildings and industrial environmental audits to reduce waste and enhance efficiency that would also include revisions to the building code, and I notice that revisions to the building code are missing in Bill 21; and
- (5) calls for the expansion of the network of local electrical and other utilities to ensure sustainable energy

supplies, provide an increasing number of good jobs and underpin local economic strategies.

For those of you who may be interested in knowing more, you can access our complete energy policy document by visiting our website at www.cep.ca.

I wanted to highlight those portions of the policy for you today because I think they are the most relevant to your deliberations. I want especially to pursue and expand on point number 5 and how, in our view, none of these discussions should be held in isolation of the economic reality facing Ontarians.

With all due respect, the overall impression we have of the Ontario government's energy policy generally, including Bill 21, is that it ignores the immediate needs—indeed the crisis level needs of a vast section of the province. Don't get me wrong. Don't misunderstand me. There is probably not a single person in Ontario who does not support energy conservation, and that includes every last member of CEP. We believe and promote cogeneration initiatives in our industries, and our members in forestry especially understand the need for biomass energy production. We also note that Bill 21 is silent on both of those issues. Bill 21 and the government are also alarmingly silent on the much more pressing issue of energy pricing, especially as it affects consumers and workers in northern Ontario.

There is a crisis in this city of Thunder Bay, and in Kenora, and in Red Rock, in Dryden and in Sault Ste. Marie, and in every single community in northern and eastern Ontario whose economic survival depends on the forest industry. In our union alone, within the last few months more than 3,500 people have lost their jobs because of this crisis. Mill closures and cutbacks in the forest sector, according to economists, have put another 12,000 to 15,000 jobs in jeopardy in the province of Ontario. For the record, many of those jobs that depend on a vibrant forestry sector are in the metropolitan Toronto area.

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There is real hardship being faced by families in mill towns right across the northern and eastern portions of this province. City tax bases are being eroded, so public services are already suffering, real estate values are collapsing and local businesses from pharmacies to gas stations are in jeopardy, but we see nothing from the Ontario government to give people hope.

We fought for more than a year to have the government convene all stakeholders to come up with solutions. Finally, Premier McGuinty appointed a representative group, calling it the forest sector competitiveness council, and I am proud to say my union played a leading role in the work of that council and our regional vice-president, Cec Makowski, was one of the signatories to its final report, released almost six months ago.

More than anything else, that report identified one overriding reason for the crisis being faced by mill towns and our members: high energy costs. Every single company that has closed down operations in Ontario in the past year has cited one overriding reason for the closure:

high energy costs. The Northern Ontario Municipalities Association, or NOMA, has repeatedly cited one overwhelming need to revitalize our towns and the economy in the north: relief from high energy costs. Through the work on the council, through direct meeting with the Minister of Natural Resources, through letters to the Premier and through briefs to the Legislature, CEP has identified one overwhelming and urgent need from the government of Ontario: relief from high energy costs.

We have proposed the creation of a special economic zone in northern Ontario, but the government has been silent; in fact, it has been worse than silent. Consider this: Just last week, Minister Ramsay had the nerve to blame workers for the crisis in northern Ontario. Within hours of that astonishing statement, the Premier himself appeared on CTV news to say that he now believes his so-called forest industry relief policy isn't working. I cannot begin to describe the depth of frustration and anger in the ranks of our membership over those two statements and over the callous inaction on the part of the government.

The day General Motors announced job cutbacks in Oshawa, Ontario, Premier McGuinty went on television to ask GM to reconsider its decision. The day Cascades closed its mill in Thunder Bay: total silence. The day Abitibi Consolidated, Bowater, Domtar, Norampac, Smurfit-Stone, Weyerhaeuser and others gave our members the pink slip: deafening silence.

It's little wonder there is a movement in the north for joining Manitoba. That more than anything personifies how angry, frustrated and ignored people are feeling.

As members of the Legislature, you have a chance to make a difference to the people of Thunder Bay and northern Ontario. I urge you to continue your important work examining energy conservation, but don't stop there. Examine conservation of good-paying jobs, the economic conservation of a vast region of this province and the conservation of an important way of life to tens of thousands of people.

We'd be glad to take your questions.

The Chair: Thank you, Mr. Huget. We have ample time for questions. We'll have about four minutes each. We'll start with you, Mr. Hampton.

Mr. Hampton: Thanks very much for your presentation. The Ontario Power Authority, for its power estimates, says that this government's much-ballyhooed smart meters initiative might reduce electricity consumption by 500 megawatts. A lot of local distribution companies—Thunder Bay Hydro, Atikokan Hydro—think it will cost \$2 billion. In other words, the government will spend \$2 billion and get a 500-megawatt result.

I just want to go through some numbers with you. When the Kenora mill was shut down, that was 45 megawatts, I believe.

Mr. Huget: Yes.

Mr. Hampton: That's what we heard. In Dryden, they shut down a sawmill and a paper machine, and that was 10 megawatts. The Thunder Bay Bowater pulp mill was

another 10 megawatts that will go; Red Rock, Norampac, 10 megawatts; Cascades, three paper machines, 30 megawatts; Terrace Bay, 10 megawatts; and then the ERCO chemical plant, five megawatts. So just in northwestern Ontario, I've added it up, the people of northwestern Ontario have already 120 megawatts of electricity that is available and can't be used or shipped to southern Ontario; it can't be shipped anywhere. But I estimate it's about 3,500 jobs.

If the government is willing to spend \$2 billion to get 500 megawatts, would it have cost anywhere near \$2 billion, would it have cost even \$1 billion or would it have cost \$500 million to sustain some of those jobs since it involved 120 megawatts of electricity? It seems to me the government has no problem throwing \$2 billion down the drain on smart meters, but just a fraction of an investment and a change in electricity policy would have sustained a lot of jobs and we still would have had an electricity surplus in northwestern Ontario.

Mr. Huget: Like you, I am a little bit confused as to the emphasis on smart metering, and I will come back to that in a moment. But you're absolutely right. When you look at the number of closures and the shutting down of facilities that lead to generating capacity, you would have thought that indeed a fraction of that amount of money would have been required to keep those facilities running. I wouldn't have the exact detail, but I believe it would be far less than the \$2 billion on smart metering.

The smart metering initiative itself sort of leaves me scratching my head. Frankly, who's going to pay for the smart meters? What happens to the cost? We know there's a cost to individual homeowners, but I have a hunch there's going to be a cost to municipalities. I would hope that what I am seeing is not only talking about smart meters in the middle of an energy crisis that's caused by government inaction on other issues, but that we're not also talking about that as well as municipal downloading to municipalities that are broke now.

Bill 21, frankly, in the area of sustaining the economy of northern Ontario, dealing with the structural energy problems in the industry in this area of the province and others, doesn't come anywhere near dealing with that. You could probably spend \$2 billion in a much smarter way.

The Chair: We'll now move to the government side. Mr. Delaney.

Mr. Bob Delaney (Mississauga West): Thank you very much for coming in and for a very interesting presentation. I have a couple of what I hope are very short questions. I'm sure you can probably answer them in a few words. Is the global demand for pulp and paper rising or falling?

Mr. Huget: That's a subject of debate. I would suggest to you that I don't believe it's increasing. I think it's fairly stagnant. I wouldn't suggest it's a growth industry.

Mr. Delaney: Does the value of the Canadian dollar affect the financial health of the mills in the area?

Mr. Huget: Yes, the value of the Canadian dollar does affect all export products, but I need to remind you

that we've had dollar values like this before, if I go back into the 1990s, and mills were sustainable. There is a combination of events here that are leading to the utter devastation of industry, which would include the cost of fibre, the weak US dollar or strong Canadian dollar, whichever way you want to look at it, and, time after time, high energy costs.

Mr. Delaney: From your perspective, because of course your members are where the rubber meets the road in the pulp and paper industry, what portion of retained earnings have the mills in the area invested in R&D and in upgrades of plant and equipment to remain competitive in the last 10 years?

Mr. Gary Bragnalo: I work at Bowater, and in the last 10 years, they spent a pile of money there—\$200 million on a new boiler about four years ago. Probably since 1990 they've put in the TMP plant, water quality. They've been upgrading steadily. They have put a lot of money into that plant. They shut down A mill a couple of weeks ago.

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Mr. Delaney: To your knowledge, are there regions in North America where the price of industrial electric power is falling?

Mr. Huget: To my knowledge, we are, I believe, the second-highest in North America, and I'd have to look at a figure between Arizona and Ontario. That's what I know.

The fact of the matter is, we were the lowest jurisdiction in North America for the longest time, and we are now either number two or number one in energy cost. The issue about whether or not companies sink research dollars into facilities and whether they sink capital dollars into facilities depends on the structural economic conditions in that jurisdiction. And when you are facing, frankly, energy pricing and fibre costs that would make any investment questionable unless those structural issues are dealt with, the add-on investment doesn't flow.

Mr. Delaney: Thank you.

The Chair: Mr. Gravelle.

Mr. Gravelle: How much time do I have? About 30 seconds?

The Chair: A minute 20.

Mr. Gravelle: Thank you very much for your presentation as well. I presume that you agree that the announcement today about the extension of the rate cap is an important one. It's certainly one step that needs to be taken.

But what I actually wanted your thoughts on was the concept of regional pricing, which is one that I've been talking about in the past, and I presume you've got some thoughts about it as well. I'm curious. It has certainly been difficult for me to win that battle so far, but it's one that I've discussed down at Queen's Park. So what are your thoughts on that?

Mr. Huget: We are, as I said earlier, proponents of a regional pricing policy, in particular around northwestern Ontario and northern Ontario. We think it can be a tool for economic development and it should be, and it's one

that could be used. You have excess generating capacity here that is landlocked, frankly; it can't go anywhere. There are limitations in the grid and it sits here, of use to no one. I think that economic lever should and could be used.

The announcement, by the way, for the record, is nothing more than a continuation of the status quo. Under the status quo, we lost 3,500 jobs, and facilities closed every other day for weeks. So I would suggest to you that today's cap is nothing more than the status quo, and under the status quo the gentlemen to my left and right are cleaning out their lockers at work and looking for new jobs.

Mr. Gravelle: But if the cap was lifted, of course, it would have gone up.

The Chair: Thank you, Mr. Gravelle, for your questions and comments. I apologize for intervening, but now we move to the opposition side.

Mr. Yakabuski: It seems like you were getting the excuse list from the government side as to why they can't do anything to assist in the crisis that the north, in particular the pulp and paper industries, is facing. They don't want to talk about that price cap announcement today. For the last two-plus years, the government has been moving to saying it's going, and only a few short weeks ago—a couple of months at the most—Minister Duncan said, "Absolutely not. It is going; we are removing that." It sent such a discouraging signal to people in the industries that their position was, "Not only are we not going to invest here; we're going to start to pull back on the investments we have."

Now we get a totally different announcement today that's been brought on by pressure from people like yourselves and the opposition parties. But their announcement is basically flying by the seat of their pants. They don't know what to do in electricity. I would suspect, very soon—because now they've sent the signal out to any of those people who were going to invest in the generation of electricity, "Sorry. You're not going to make any money here in Ontario." So the idea of building gas plants has now become less likely. I think you're going to see an announcement quite soon that this government has finally come to its senses, realized it was totally wrong, never investigated, never did anything, never truly looked at the options and the ramifications of their decisions, and they'll be revisiting their coal decisions.

But 61,000 jobs have been left in the wake of their dallying and failure to take proper measures, many of those, an unfair percentage of those, in the pulp and paper industries up north. What has this government been doing for the past two years? Has it simply had its head in the sand?

Mr. Huget: I wouldn't want to comment on the position of the government's head—I don't think that would be wise—but I certainly would say that there definitely has not been, in my view, a meaningful, sincere understanding of the magnitude of the problem. There has been a reluctance to step up and address the issues, for whatever reason. There has been, in some cases,

ignoring of obvious solutions that would provide much-needed help to a lot of industries.

I can't begin to comment on what would be behind that from a government's-thinking point of view. All I know is that we've been asking for the energy pricing issue to be addressed—so have many others—for months and months and months. We see little, piecemeal announcements like the continuation of the status quo, which cost us 3,500 jobs, or smart meters, which no one really knows who is going to pay for, or conservation initiatives that do not contain building code amendments, and all kinds of regulation. Bill 21 is regulation. There is nothing in the bill on legislation. It's pages and pages of regulation that don't deal with the crisis.

I would say to you that someone in government is not listening to the people of this province who are facing a dire circumstance. There are ways to deal with the problem. This province needs an electrical policy, an industrial policy and an economic policy for the rest of the province, including the north, that is intertwined and starts to move Ontario as a jurisdiction ahead, not picking the pieces up that have fallen backwards.

The Chair: Thank you, Mr. Yakabuski, for your questions and comments. Gentlemen—Mr. Huget, Mr. Bragnalo, Mr. Boon—I'd like to thank you for your deputation and written submission on behalf of the communications team of the Communications, Energy and Paperworkers Union of Canada. Thank you for your presence.

Mr. Huget: Thank you so much. I appreciate the time to appear.

SHARON KOZAK

The Chair: I would now invite our next presenter, Mrs. Sharon Kozak, who comes to us in her capacity as a private individual. Ms. Kozak, I remind you that you will have 15 minutes in which to make your full presentation. As you've seen the protocol, any time remaining will be distributed evenly among the parties afterwards. I invite you to begin now.

Mrs. Sharon Kozak: Good afternoon, Mr. Chair and committee members. Thank you for coming to Thunder Bay and for hearing me today.

My name is Sharon Kozak and I'm a resident of Thunder Bay. My presentation today is really just my own personal view. However, in speaking for a large cross-section of other Thunder Bay residents, I hear that they have the same view, which is that smart meters are only going to create a different peak time than we have now. People still have to do the same amount of dishes, laundry and other household chores. So the meters are not going to conserve energy at all; they're just going to move the use to a different time of day.

People who are already very busy lead busy lives. They don't need to be stressed out more by being forced to do their household chores late into the night. I wonder, then, where does that leave people who work nights and shift work? They wouldn't be able to take advantage of

the smart meter, because they would have to be doing their household chores outside the time.

What I see in the news of the pilot program, the monthly cost of the meter is going to be more than the savings to the consumer. Whatever the cost of the meter—whether it be \$250 to \$300 or whatever it is—is the monthly charge going to be removed when that amount is reached? If not, are consumers going to have the option of buying the meter outright?

In fact, I wonder why the consumer is being charged at all. If the energy board, the province and/or the hydro companies want to change the meters, then the cost of doing so is just the cost of doing business. I compare that to the case of, say, a gas station wanting to install new pumps. They're not going to charge the consumer a rental fee when they go to fill up their vehicle.

There are many ways to conserve energy. One simple way might be to mandate all private, municipal, government, schools, office buildings etc. to turn off all the lights, computers and other office equipment during non-working hours because in my travels, I've noticed that this isn't being done.

A minor issue that I'd like to speak to is the rate that consumers are paying for the lost electricity in the lines. When a consumer diligently tries to keep the energy use under the prescribed kilowatt hour limit for the lower rate, why do we pay the higher rate on the hours over the limit when those hours occur because of the adjusted calculation for loss of electricity through the lines? In fact, I don't think the consumer should be paying for this lost electricity at all, much less at the higher rate. Again, I could use an example of a gas station. If the gas tanker comes to fill up his tanks and he spills some, he's not going to charge them for the spillage.

In closing, I would just like to thank you again for hearing me today.

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The Chair: Thank you, Mrs. Kozak. You've left a generous amount of time for questions. We'll have about five minutes each, and we'll begin with the government side.

Mr. Gravelle: Ms. Kozak, thank you very much for appearing. I should probably tell the members of the committee that Mrs. Kozak is my constituent. We sat down, what, about two weeks ago, Sharon? Sharon expressed concerns and interest in this particular legislation and other matters as well, which we're trying to get responses for you on. I'm just grateful that you came forward. I hope you feel it was a worthwhile exercise.

Mrs. Kozak: Yes.

Mr. Gravelle: Is it fair for me to say, though, that you do not feel confident that the smart meter itself will be a valuable tool in terms of being able to manage the use of energy in your home, because of the fact that in many ways it's a timing issue, a question of when it's used? Maybe some of my colleagues who are more wise about this can speak with you after me, but does that sum it up, that you haven't got a level of confidence in that?

Mrs. Kozak: Yes.

Mr. Gravelle: I would invite any of my colleagues—maybe Kevin could speak to you as well. Anyway, I was very keen to have Mrs. Kozak appear.

The Chair: We have a speakers' list. Mr. Delaney, and then we'll move on.

Mr. Delaney: I'll make this one pretty short. Thank you very much for an interesting and actually very insightful deputation. Just to give you a little bit of context, I have the first smart meter in my neighbourhood, which was a demo program by my local electricity company. The purpose of the program is basically to shift the load consumption. For example, the management printouts that you can either get mailed to you or on the Web allow you to see when you're consuming the electricity and the value of taking your dishwasher or your dryer and just pressing the two-hour delay switch. The difference between running it during the late afternoon or early evening and the late evening does make a difference. You can actually see it on your bill.

It was an observation, not a question. I believe Mr. Flynn has a question for you.

Mrs. Kozak: I was just basing my view on what I saw on the news regarding this pilot program. It was stated there that the saving was \$1.36 a month for these people, and the cost of the meter is going to be greater than that.

Mr. Delaney: Well, I saw them install it in my house. It took them a minute and a half to do. Like all electronic components, as volumes of them are installed, you can expect their cost to drop exponentially.

Mr. Kevin Daniel Flynn (Oakville): As we've travelled around the province, we've heard from all sorts of people from all walks of life. Yesterday, we were in Chatham, and they'd had a pilot project done down in Chatham. It appears from the report they gave us that it was quite a successful pilot project. It gave us some evidence that some of the savings we're seeking to find are in fact being found. So you're not opposed to the principle of having smart meters; you need some proof that these things actually are going to pay for themselves and provide a dividend in savings, in energy and in dollars for you personally.

Mrs. Kozak: Yes.

Mr. Flynn: I think that's fair. I don't think there's anything—

Mrs. Kozak: Of course, the savings should be greater than the cost.

Mr. Flynn: But you would agree that something needs to be done about energy consumption in Ontario that hasn't been done in the past, and that this government is attempting to do something. You just need more confidence in the results.

Mrs. Kozak: Yes.

Mr. Flynn: I think that's a fair presentation.

Mr. Jeff Leal (Peterborough): Thank you very much, Sharon, for being here. I can assure you that my colleague to my right here, Mr. Gravelle, is an effective spokesperson on behalf of your concerns.

I just want to ask you about your own personal activities in your own household to save electricity. When you go across Ontario and talk to people, a lot of good ideas come about through just people in their own homes having innovative ideas. If you could share with us—you're obviously interested in this issue and very diligent, and I'd just like to hear your own in-house activity.

Mrs. Kozak: We've changed a lot of the light bulbs wherever possible to the energy-saving bulbs. When I do laundry, I make sure I do a full load, as opposed to just small loads that would cause you to do more.

The Chair: I'd like to thank the members of the government side. Thank you for your patience as well, Mrs. Kozak. We'll move now to the official opposition.

Mr. Norm Miller (Parry Sound-Muskoka): Thank you very much for your presentation today. I think the points you've raised make a lot of sense. We don't really know what the cost is going to be for the smart meters, the monthly charge to the individual consumer. We had a presentation earlier in the day from Atikokan Hydro pointing out that they have unique situations. They gave an example where they have a distribution area that has a substation with six customers, three of whom were seasonal, and they were going to have to build a 400-foot tower and run special phone lines to be able to make this work. They also went on to say that the cost of the smart meters for them could be as high as 80% of the value of the whole Atikokan Hydro, which is pretty substantial. So I think you're right.

The basic question I have, too, is, does it make sense, especially for small electricity users? As far as I know, the government's plan is to make these mandatory. So my question to you is whether it makes sense or not. What if you're a small user who can't shift your load to the middle of the night? From my feeling, I think it should be optional, so individual homeowners can decide, "Yes, I think it makes sense. I'm willing to pay whatever the cost is, the \$4 to \$8 a month, the extra cost, because I use a fair amount of electricity and I can shift my load to a time of lower price." Do you think it should be optional?

Mrs. Kozak: Yes, I do, because if people can't take advantage of it, they're going to be paying for really not using it at all. So if people think they can use it and have the option, then I think that would be a better way to go.

Mr. Miller: We just heard from the paper union which was really making it clear that there is a crisis in this area, particularly for pulp and paper mills that are losing thousands of jobs, and the forestry sector. You know that, living here in the community, and I'm sure you know people who have lost their jobs. Is this bill really going to make any difference in the big picture and for the crisis that's affecting all of the north and very much the Thunder Bay area? It's dealing with smart meters and energy plans for conservation.

Mrs. Kozak: I really don't think they're going to conserve any energy at all.

Mr. Miller: If Mr. Hampton is right in his estimate of cost—he says it could cost as much as \$2 billion; I don't

know whether he picked that one out of the air or whether it's a real number—if that is really the cost of implementing smart meters across the country, I think the point made is very good: Does it make sense at all? I think, at the very least, consumers and industry should have a choice as to whether they think it makes sense for them if they want to pay for the cost.

Mr. Yakabuski: Thank you very much, Mrs. Kozak, for joining us today. Actually, my questions or comments are basically similar to my colleague Mr. Miller's. We've had other people at some of these hearings talk about whether it should be mandatory or voluntary. Sometimes we find that the government party has this idea about seeming to have all the answers and needing to take the options away from people, because they're the social engineers, if you want to call it that.

I'll give you an example. We had a gentleman in the other day. If you had 20 people doing smart-metering and it started out with the highest users somewhere at 70 kilowatt hours a day, down to 65, etc., and then you get to the low ones, you're going to have diminishing returns as to how much possible electricity they can conserve based on the amount they use. The gentleman who was in the other day had a very small electric bill of something like \$13 a month. He would be able to save absolutely nothing, whether he had a smart meter or not. He's got it down to a T. He knows exactly how he's using electricity and is using it as carefully as possible. All he's going to get is a charge on his smart meter. The estimates range as high as \$8 a month for some people, but that is a pilot project. They've just had a pilot project.

Would you agree that this thing is more about politics than about conservation and that they have no real data that can state what kind of savings are going to be made versus the expenditure in this program?

1400

Mrs. Kozak: I would say that they really need to collect more information before they actually pass this bill. I don't think all the information they need is there.

Mr. Yakabuski: So it certainly would be your position that this should have been a voluntary program, not a mandatory program.

Mrs. Kozak: Yes.

Mr. Yakabuski: And those who would benefit by it, if it's such a great idea, would flock to it. Nobody has to tell somebody to go out and buy cornflakes if it's the best cereal; they're all buying it. So if it was a great program it would sell itself.

Mrs. Kozak: Yes.

The Chair: Mr. Hampton, I can offer you the last one minute.

Mr. Hampton: That's fine. My sense, from talking to a lot of people, is that they are quite interested in saving energy, saving electricity. If you could provide people with low-interest loans so they could go out and buy energy-efficient refrigerators and freezers and not have to pay a lump sum right off the top because they don't have the money, people would do that. If the government provided people with an incentive, say a low-interest loan

to put in energy-efficient windows and better insulation, a lot of people would do that. But the government isn't doing that. I don't see anything about smart meters that's going to provide somebody with an electrically efficient fridge or an efficient freezer. I don't see anything here that's going to provide people with the financial help they need to put in energy-efficient windows. I don't see anything here that's going to provide people with the help they need to re-insulate their homes.

The question I'm asking you is, this is going to cost \$2 billion, but where is the money going to come from that a lot of ordinary folks will need in order to reduce their electricity consumption?

The Chair: Thank you, Mr. Hampton, for your questions and comments. On behalf of the committee, we'd like to thank you, Mrs. Kozak, for your presence as well as your written deputation and thoughtful remarks.

ECOSUPERIOR ENVIRONMENTAL PROGRAMS

The Chair: I now call forward our final presenter of the afternoon, Ms. Ellen Mortfield of EcoSuperior Environmental Programs. Her written deputation has been distributed, I understand. Ms. Mortfield, as you've seen, the protocol is 20 minutes in which to make a full address, and any time remaining within that will be distributed evenly amongst the parties for questions. I invite you to begin now.

Ms. Ellen Mortfield: Thank you very much. Just a bit of background: I am with EcoSuperior. We're a non-profit organization and a member of Green Communities Canada. I believe you heard from Green Communities Canada in Toronto a few days ago. We are a part of that group.

I am here to speak specifically about one section of the bill, the part that enables universal energy efficiency labelling of buildings. We strongly endorse this step and want to recommend some further additions to this provision. I want to take the opportunity to address some of these concerns. Also, I want to take the opportunity to address section 7 of the bill, which deals with community-based public education and outreach on energy efficiency and conservation.

EcoSuperior works with community partners and all levels of government to deliver programs that help build more sustainable communities. For example, we work with the city of Thunder Bay to encourage people to participate in water conservation. We help Environment Canada with outreach campaigns on dioxins and mercury. We help smaller municipalities organize hazardous waste collections. We also co-operate with local businesses. We work a lot promoting local business, and they in turn help promote our programs. For example, our thermostat collection depots are now in every community between here and Sault Ste. Marie at the offices of heating contractors. Together we are keeping a lot of mercury out of local landfill sites.

Energy conservation is also a big part of our mandate. We are a delivery agent for Natural Resources Canada's EnerGuide for Houses program. We have delivered more than 800 home energy assessments since 1999. Last year, we helped homeowners access more than \$52,000 locally in federal incentives and reduced the space heating costs by an average of 33%. Those savings and financial incentives translated into a great deal of renovation work and product sales for local businesses as well, so it's a very important program locally for us.

Also, I'd like to let you know that EcoSuperior has no core funding support. We rely entirely on project-based funding to support the organization. The EnerGuide for Houses service provides important revenue to support the environmental work we do in the communities. In other words, that one program helps support a lot of our other programs, as well as supporting and generating work for local businesses and trades.

I don't have a lot of time so I probably won't go through all of the recommendations that Green Communities Canada went through, but I'll highlight a few of the ones that are most important to us locally. Our second recommendation is that subsection 2(1) in schedule A of the bill be strengthened to require, rather than simply enable, mandatory universal labelling of building energy performance at point of sale, lease or transfer. We feel this is a critical part of the bill and it needs to be made mandatory. Universal labelling is already in place for most energy-consuming products, including appliances that consume a lot less energy than homes and buildings. In our appliance rebate programs, we always emphasize to people that there are two price tags: what you're paying for the appliance and what you're paying to operate it. It's very basic information to the whole concept of establishing a conservation ethic, and people should have access to that information when they're purchasing a building. Now that we're this close to making that information available to people, making it mandatory would certainly level the playing field and allow people to make realistic comparisons between buildings.

The third recommendation in my written submission is that EnerGuide for Houses be adopted as the standard for labelling residential buildings. There are a number of reasons, partly that it's a widely recognized system. It's known to homeowners now, and it's being used across Canada. There is a lot of infrastructure and a delivery system in place. EnerGuide for Houses goes that step further in not just applying a rating to a building but giving the building owner the information they need to improve and upgrade that building. In order to accomplish some real energy savings, we need to make sure those retrofits happen, and EnerGuide is a logical system to make sure people have the information they need to make those decisions on retrofitting buildings.

I'm going to skip down to recommendation 5, that Bill 21 be amended to enable the province and local governments to establish minimum energy efficiency standards for existing buildings. This has created a lot of

discussion among people, but ratings alone are not going to create any real progress towards our conservation goals. It's the existing buildings, not the new ones being built, that are the largest source of energy loss, and it may never really change unless minimum efficiency standards are established. We anticipate that the requirement to meet minimum standards need not be a financial hardship because, as energy costs continue to climb, the payback time on energy-efficient investments is going to continue to decrease. Hand in hand with that, we need to look at, as Mr. Hampton mentioned, the incentives to help people meet those minimum standards.

I'd also like to mention that Bill 21 needs to support—this links in to support for building owners to fulfil requirements in any regulations that come out of this bill. We need to make sure that people have access to energy advisers, to rating services and organizations, to home renovation contractors and to energy-efficiency-related incentives and loans. While there are some of those programs in place, they come and go. There's not a lot of consistency, and there's not a lot of help, particularly for commercial owners to be informed and work their way through the process of accessing those incentives.

1410

Another thing I wanted to mention was that access to energy adviser service and ratings is of particular concern to smaller communities in this region. We regularly receive requests for service in outlying areas that we do not currently have the capacity to serve. Assistance in providing service to remote areas where travel times are substantial needs to be considered. If ratings indeed become compulsory, we need to make sure that every community has access not only to the ratings service but to the help they need to improve those buildings.

Finally, I want to make sure that I provide some comments on the whole area of section 7 of the bill, which enables the minister to enter into agreements to promote energy conservation and energy efficiency. We'd like to recommend that the province work with community-based organizations such as EcoSuperior and our fellow Green Communities Canada members. We've used our community-based social marketing expertise to engage people in reducing waste, conserving water and preventing pollution with proven and measurable results. Our programs have been shown to be far more effective than conventional mass marketing in changing behaviour. An investment in public education and outreach using a cost-effective tool such as green community organizations will provide additional support also through leveraging our local partnership resources. It's really getting out there and talking to people about these conservation messages that's going to make it work. Thank you.

The Chair: Thank you, Ms. Mortfield. We have lots of time for questions. We'll begin with the official opposition. We have about five minutes each.

Mr. Miller: Thank you. I'm interested in your idea about the universal labelling of buildings for energy performance. I wonder if you could tell me how it would work. I assume there must be an audit that would be done

of homes or commercial buildings. Maybe you could expand on that for me.

Ms. Mortfield: That's correct. I can tell you what we do residentially now. The EnerGuide for Houses program is software developed by Natural Resources Canada. We can go into a home, assess the building envelope and everything that's in the home and actually measure air leakage, and give that report to the homeowner, along with a rating between zero and 100. If your home is a 14, you know you have work to do.

Mr. Miller: So 100 is good.

Ms. Mortfield: That's right, 100 is good. The federal government also has a grant program linked to that. When you have your energy assessment done, you'll receive a report that prioritizes recommendations and tells you that if you upgrade your furnace, you're going to move up 18 points or if you add insulation to the attic, you'll bring it up another six points. The point system relates to the grants.

Mr. Miller: Where would the actual label show up? So I'm going to buy a house or property; is it something that's described in the legal documents?

Ms. Mortfield: Generally, on the electric panel.

Mr. Miller: So it's actually physically right in the house, so it's pretty easy to find.

Ms. Mortfield: Yes.

Mr. Miller: I guess my next question is, once you identify that the property is in need of help, in need of retrofits, how do people pay for the retrofits, especially in the climate we have here in Thunder Bay right now, where so many people are losing their jobs? What's your advice on that?

Ms. Mortfield: The grant program is meant to help. It's not a substantial amount of money and it's not based on what you spend; it's based on the actual efficiency increase that you can achieve through those retrofits.

Mr. Miller: That's an actual federal grant program, so it's not repayable then? It's not something that's repaid, if it's a grant?

Ms. Mortfield: No, it's a grant. That's right. But the beauty of the program is that it allows people to prioritize. A lot of people think they need a new furnace or new windows, but by actually performing the energy assessment on the home, it's going to tell you what will really make the difference. We can work out the payback period for you, so it enables people to budget for things. They know that if they save up for a new furnace, it's going to be worth their while and they're going to know exactly how much their costs will decrease as a result of that change.

Mr. Miller: Obviously, the government would love to give out grants to people, but is the current federal system based on income as well?

Ms. Mortfield: No, the current system is based on the actual change in efficiency that you achieve. The more points you move your home up the scale, the more of a grant you get.

Mr. Miller: Okay. One of the last presenters, from the Communications, Energy and Paperworkers Union,

stated that in this bill, one of the things missing was changes to the building code. I would think that would be a natural and simple way as well to bring about—especially in new buildings, at the very least, or renovations.

Ms. Mortfield: Absolutely. That's an important part of it. It should. I think most homes are built to considerably better standards, but the majority of the homes that are out there are the old ones. Those are the ones that people on lower incomes are buying. They need to be able to compare and to know what they're getting into. This is why the mandatory ratings would be of benefit.

Mr. Miller: On section 4 of the bill, there are lots of requirements in the bill for people to make plans—government is great at requiring plans. That means a lot of people are busy making conservation plans, but in the end, it might not make any difference at all in terms of the end result of conserving energy. Our first presenter today was saying, more or less, that the bill was too prescriptive and required too much work on behalf—in this case—of Atikokan Hydro. They were faced with some fairly major obstacles in implementing the bill, but government isn't necessarily—

The Chair: Thank you, Mr. Miller, for your questions and comments. We'll now move to the government side. Mr. Brownell.

Mr. Jim Brownell (Stormont-Dundas-Charlottenburgh): First of all, I'd like to thank you for your presentation today. There were some good insights and thoughts on energy conservation. I have about three questions. Hopefully, they will be short enough that we can get them in.

The first one: In your presentation, little comment—actually, I don't think there was any comment—on smart meters, certainly a tool that we see as helpful to consumers in energy conservation. What are your thoughts? You're public relations and programming for Eco-Superior, and have obviously been out in the community and have heard from people. What are you hearing?

Ms. Mortfield: I mainly hear the negative view on smart metering, to be honest. It's not widely accepted. There is already good awareness. People want to conserve. They want help from organizations like ourselves to tell them how, what makes a difference, and, "What can I do?" But I think they see the smart meters as a little bit—I don't know. Assuming that people don't know how to conserve, you can take advantage of time-of-use rates without a smart meter, correct? You don't really need a smart meter to tell you when you're going to save if time-of-use rates are in place.

Mr. Brownell: Going to one of the recommendations you've made here—you have strengthening the section to require mandatory labelling. I'm wondering about the responsibility for this: Are you looking at the responsibility being on the buyer or the seller? Where do you see that fitting in? Obviously, you would want this. In encouraging this, who should be responsible?

Ms. Mortfield: The seller, because people need to know what they're getting. It could be a benefit to the seller as well. Once they have the rating, they would then

know that if they upgrade by certain measures, they're going to increase the value of the property by that.

Mr. Brownell: In Chatham yesterday, the very last presentation was from an individual in a business very similar to what you're representing. She talked about this culture of conservation that we're looking for in Ontario, encouraging people and trying to get the message out etc. I didn't get a chance to ask her the question, but I did after. I spent 32 and a half years in a classroom. I taught science, and every year we had conservation education and programs in place to encourage kids to get out there to encourage the community. What do you see in that regard with regard to what—

Ms. Mortfield: That's the critical part of all this. There are a lot of activities involved in building that conservation culture. Regulations are one of them, outreach is one of them, programs to financially assist people are another aspect; it all has to work together. School programs are an important part of that as well. I'm just putting together a funding proposal for a school program to get us out there with hands-on, take-home activities for the kids to get involved, both at school and at home.

Mr. Brownell: You're not the only one, because when I talked to her yesterday, she's doing the same thing, and that's good. That's exactly what we want.

The Chair: Mr. Gravelle?

Mr. Gravelle: How much time do we have?

The Chair: You have two minutes.

Mr. Gravelle: I won't need two minutes. I just want to apologize for not being here during your presentation, Ellen, but for those of you who don't know, Ellen Mortfield and EcoSuperior are a remarkable organization in Thunder Bay with a great reputation, and are doing great things in terms of making our environment—and making it more accessible to the public. Would you not say, Ellen, that that has actually has been one of the key goals of EcoSuperior, having consumers becoming comfortable with the idea of basically cleaning up their

lives, their houses? I think that's what has made it, if I may even go a little further, kind of fun. There's that element, and you've been really pushing for that in a very serious way.

Ms. Mortfield: Yes. Getting people involved and finding ways to motivate them is very important. We've often said that one of the most important things EcoSuperior does is one that we are not specifically funded to do, but it's just to be there, to have people in place to answer people's questions, a place that people can drop in or call and say, "Why can't I recycle number 6 plastics?" "Can I put this in my composter?" Because nobody else is out there doing that.

The Chair: Very briefly, Mr. Leal.

Mr. Leal: Let me tell you that Mr. Gravelle and Mr. Mauro are always talking about the city of Thunder Bay and their innovative ideas. My question is: A few people have talked about the protection of privacy with the smart meter. We may be setting up a smart meter entity that will be collecting significant amounts of information about individual usage. Do you believe there's a need to put something in the legislation to protect privacy?

Ms. Mortfield: I didn't do a great deal of research on the smart meter issue because I was looking at a very specific part of the bill, but I've heard that as a concern from people too, about their knowing all my personal habits—

The Chair: I'm going to have to intervene there. I'd like to thank the members of the government for their questions and comments, and thank you as well, Ms. Mortfield, for your deputation and the written submission, always much appreciated.

I'd like to advise members of the committee that Wednesday, February 15, is the clause-by-clause consideration and that Monday, February 13, at 12 noon is the deadline for filing amendments. If there's no further business, this committee is adjourned until then.

The committee adjourned at 1422.

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Journal des débats (Hansard)

Mercredi 15 février 2006

**Standing committee on
justice policy**

**Comité permanent
de la justice**

**Energy Conservation
Responsibility
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 15 February 2006

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*The committee met at 1019 in room 228.*ENERGY CONSERVATION
RESPONSIBILITY
ACT, 2006LOI DE 2006 SUR LA RESPONSABILITÉ
EN MATIÈRE DE CONSERVATION
DE L'ÉNERGIE

Consideration of Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act / Projet de loi 21, Loi édictant la Loi de 2005 sur le leadership en matière de conservation de l'énergie et apportant des modifications à la Loi de 1998 sur l'électricité, à la Loi de 1998 sur la Commission de l'énergie de l'Ontario et à la Loi sur les offices de protection de la nature.

The Chair (Mr. Shafiq Qaadri): Colleagues, welcome. As you know, we're here for clause-by-clause for Bill 21, An Act to enact the Energy Conservation Leadership Act, 2005 and to amend the Electricity Act, 1998, the Ontario Energy Board Act, 1998 and the Conservation Authorities Act.

There are some technical details that I need to just advise our members of. The bill consists, as you are aware, of three sections and, at the latter part, four schedules. We need to actually approve schedules A, B, C and D before we can move to the approval of sections 1, 2 and 3.

In any case, we're going to schedule A, section 1. I understand we have our first amendment, being proposed by Mr. Hampton of the NDP. I would invite you to bring forth opening comments on that, Mr. Hampton. This is motion 1 for schedule A.

Mr. Howard Hampton (Kenora-Rainy River): That's right. This is our first proposed amendment. It's section 2.1 of schedule A to the bill, which is section 2.1 of the Energy Conservation Leadership Act, 2006.

I move that the Energy Conservation Leadership Act, 2006, be amended by adding the following section:

"Tenancy agreements preserved

"2.1 Nothing in this act permits a landlord to alter or amend a residential tenancy agreement to which the Tenant Protection Act, 1997 applies without the consent of the tenant."

In other words, landlords shouldn't be able to do unilaterally through this act what they cannot do unilaterally through the Tenant Protection Act.

The Chair: Mr. Hampton, I'm sorry. Procedurally, I've just been advised that we actually need to approve sections 1 and 2 of schedule A. Your proposal is for a new section 2.1.

So I will now just call the committee's attention to schedule A, section 1, for which no amendments have so far been proposed. Any comments or questions on that unamended schedule A, section 1? Seeing none, all those in favour? Any opposed? Schedule A, section 1 is carried.

We now proceed to schedule A, section 2, for which also no amendments have been so far proposed. Any questions and comments? Seeing none, all those in favour? Any opposed? I declare schedule A, section 2 now also carried.

Mr. Hampton, we now proceed. I will yield the floor to you once again for the same proposal of amendment 1 for schedule A, section 2.1, new section.

Mr. Hampton: I move that the Energy Conservation Leadership Act, 2006, be amended by adding the following section:

"Tenancy agreements preserved

"2.1 Nothing in this act permits a landlord to alter or amend a residential tenancy agreement to which the Tenant Protection Act, 1997 applies without the consent of the tenant."

The Chair: Any questions and comments?

Mr. Jeff Leal (Peterborough): I certainly believe that this amendment is not necessary, as schedule A does not propose to override or replace the existing requirements under the Tenant Protection Act, 1997. The one section that would allow designated goods, services or technologies to be used, despite restrictions or loss, specifically provides that the provisions cannot be used to override an act or regulation. This would include protections under the current Tenant Protection Act, 1997. So we will be opposed to this amendment.

The Chair: Any comments? We'll proceed to the vote. All those in favour of NDP motion 1? All those opposed? I declare motion 1 lost.

We'll now proceed to motion 2, again by the NDP.

Mr. Hampton: I move that section 3 of the Energy Conservation Leadership Act, 2005, as set out in section 3 of schedule A to the bill, be amended by adding the following subsection:

"Due regard for the protection of public health etc.

"(1.1) In designating goods, services and technologies, the Lieutenant Governor in Council shall have due regard for the protection of public health and safety and the environment."

If you note, this motion is based on the recommendation of the Pembina Institute, which spent a fair amount of time outlining the fact that you have to remember that we are dealing with people's health and safety in terms of whatever kind of metering we might want to put in place.

The Chair: Any further questions and comments?

Mr. Leal: I again suggest that this amendment is unnecessary. The development of regulations under this legislation would include consultations to ensure input from experts and stakeholders and to ensure consideration is given to any potential impacts, including public health, safety and the environment. Where there are valid health, safety or environmental issues for a barrier or restrictions to energy conservation, these reasons will be given due consideration in the drafting of the regulations that will occur. We will not be supporting this amendment.

The Chair: Any further questions and comments? Seeing none, we'll proceed to the vote. All those in favour of NDP motion 2? All those opposed? I declare the motion lost.

We'll proceed now to consideration of section 3 of schedule A, for which no amendments have been proposed. Are there any questions and comments? Shall section 3 of schedule A carry? Any opposed? I declare section 3, schedule A, carried.

With the indulgence of the committee, if I may have consideration in block for schedule A, sections 4 to 12, inclusive, if that's the will of the committee. Seeing no objections, may I then ask for the vote? All those in favour of schedule A, sections 4 to 12, block consideration for which, incidentally, no amendments have been proposed? All those in favour? Any opposed? I declare those carried.

We will now consider schedule A, the preamble, for which no amendments or suggestions have been offered so far. If there are any questions and comments? Seeing none, all those in favour of adopting schedule A, the preamble? Any opposed? I declare that carried.

Shall schedule A carry? Any opposed? No? Carried.

We'll now proceed to consideration of schedule B, section 1, for which we have government amendment number 3 proposed, and I invite a government speaker.

Mr. Leal: I move that the definition of "smart meter" in subsection 2(1) of the Electricity Act, 1998, as set out in section 1 of schedule B to the bill, be struck out.

The Chair: Any questions and comments?

Mr. Hampton: This is bizarre, to say the least. The government has been talking about smart meters for three years now. In fact, if you do a search, smart meters seem to be about the only thing you talk about when you use the words "energy efficiency" and "energy conservation," and here you're going to wipe out the definition of a smart meter. Without a definition, is anything a smart meter? Is any meter a smart meter?

Mr. Leal: I'll ask Rosalyn from the ministry, Mr. Hampton.

The Chair: Fine. We'll ask ministry officials. As you're well aware of the protocol, please identify yourself and your designation. Please proceed.

Ms. Rosalyn Lawrence: Rosalyn Lawrence, director of consumer and regulatory affairs at the Ministry of Energy. There is a motion following this one which replaces the definition of "smart meter." The original bill had talked about time of use and—

Interruption.

Ms. Lawrence: James, sorry. Go ahead.

Mr. Leal: James is our legal counsel for the Ministry of Energy.

Mr. James Rebob: Good morning, Chair and committee. I'm honoured to be here. My name is James Rebob. I'm counsel with Ministry of Energy. I was just informing Ms. Lawrence that we have deleted the definition, choosing, rather than defining it in the statute, to use our existing regulatory authority to define the definition of "smart meter" when the technical around smart meter matures.

1030

The Chair: Any further questions and comments?

Mr. Hampton: So it's the position of the Ministry of Energy that the government is going to talk about smart meters, and when somebody says, "What's a smart meter?" your response is, "Well, we haven't defined that yet. We don't know."

Mr. Rebob: With respect, Mr. Chair and Mr. Hampton, the technical on smart metering is maturing every day, every moment that we deal with procurement. We will be defining it as shortly as possible through regulation.

Mr. Hampton: Yes. I just said you don't know. You don't know what a smart meter is. You've been talking about it for three years and you don't know what a smart meter is yet. You can't define it. It might be this; it might be that; it might be something else.

Mr. Leal: We've seen a fairly broad scope of how one might be able to define a smart meter. The technology is certainly emerging on one front. I defer to the pilot project in Chatham-Kent, where they actually retrofitted existing meters in the pilot study of about 1,000 homes in Chatham-Kent. They developed a unique approach to retrofit existing meters, and that aspect is out there. There are other technologies that are evolving. So I think it's appropriate to give some flexibility in this particular area.

Mr. John Yakabuski (Renfrew-Nipissing-Pembroke): I share Mr Hampton's concerns. There is no doubt that technologies are evolving and will continue to evolve. We still call them "cars." Technology has changed quite a bit over the years—there's no question—but we still call them "cars." People can define a car and it won't be that much different from what they talked about 50 years ago, as far as what the definition of it is. Are we saying that a smart meter is not going to mean "a metering device that measures and records electricity consumption or use based on its time of use"?

The operation of the meter and the ability of it to perform tasks is going to improve as we go forward, I'm sure, just like everything else does, computers etc., but I'm not sure that people shouldn't have a definition of what a smart meter is. I'm also prepared to see what's coming forward. You say there are amendments that actually deal with that.

Ms. Lawrence: I think the feedback we had in consultations with stakeholders of our own throughout the bill was that the metering device portion of the definition was too limiting, because much of the smartness derived from the communication system, so it's our intent to develop that in a regulation. The time-of-use portion of the definition is very appropriate. It's a matter of capturing, beyond the meter itself, the system that goes with it.

The Chair: If there are no further comments, we'll proceed to consideration. Seeing none, all those in favour of government motion number 3 for schedule B, section 1? All those opposed? I declare that motion carried.

We'll now proceed to consideration of government motion number 4.

Mr. Leal: I move that the definition of "smart metering initiative" in subsection 2(1) of the Electricity Act, 1998, as set out in section 1 of schedule B to the bill, be struck out and the following substituted:

"'smart metering initiative' means those policies of the government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters;"—

The Chair: —“(‘initiative des compteurs intelligents’).” Thank you, Mr. Leal. We'll now proceed to questions and comments.

Mr. Hampton: That's about as clear as mud. You just wiped out the definition of smart meter, and now you're saying "'smart metering initiative' means those policies of the government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters." This amendment makes about as much sense as the last amendment. The government has been talking about smart meters for three years. Now you want to take out even the vaguest definition of smart meter, and you want to say that a "'smart metering initiative' means those policies of the government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters." This is starting to look like fear of the absurd, to say the least.

Ms. Lawrence: I think that the substantive change in this definition—in the original draft of Bill 21, "smart metering initiative" was very narrowly defined to include Ontario households. The government's policy is for residential and small business consumers to be equipped with smart meters. The change is simply to ensure that we don't limit it to just residential.

Mr. Hampton: Where does it say that in the bill that's printed? I don't see that anywhere in the bill as printed.

Mr. Rehob: The reference to "household" was in the previous definition of smart meters, which was contained in Bill 21, as tabled. It's within the definition of "smart metering initiative," as it was proffered at that time.

Mr. Hampton: So your only change here, in your view, is to take out the term "household."

Ms. Lawrence: That's correct.

Mr. Rehob: To ensure it's not limited to the household.

Mr. Hampton: This becomes more vague every day.

The Chair: Are there any further questions or comments?

Mr. Yakabuski: We're not going to spend the whole morning discussing these nuances, but perhaps they should add "'smart metering initiative' means those policies of the government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters, as yet undefined." I don't know. What do you think?

The Chair: If that's a formal amendment, Mr. Yakabuski, we would require it in writing. Any further questions and comments? Mr. Leal?

Mr. Leal: No, I'm fine. I'm just reflecting that there was some concern that small businesses be included, and we want to make this as comprehensive as possible, and therefore want to widen—

The Chair: Thank you. Seeing no further consideration, we'll now move to the vote. All those in favour of government motion 4? All those opposed? I declare government motion 4 carried.

We'll now proceed to consideration of the schedule, section 1. Shall section 1 of schedule B, as amended, carry? All those in favour? All those opposed? I declare section 1, section B, as amended, carried.

We'll now proceed to the consideration of schedule B, section 2, for which we have 14 proposed amendments so far. To begin with, NDP motion 5. Mr. Hampton.

Mr. Hampton: This is an amendment to section 53.7 of the Electricity Act, 1998.

I move that section 53.7 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be amended by adding the following subsection:

"Freedom of Information and Protection of Privacy Act

"(3) The smart metering entity is designated as an institution for the purposes of the Freedom of Information and Protection of Privacy Act."

Remember, this was strongly put forward by the Pembina Institute.

The Chair: Any further questions and comments?

Mr. Leal: Mr. Chairman, I certainly agree in spirit with what Mr. Hampton has proposed here. I think protection of privacy is important. A designation for FIPPA purposes is done by regulation. Decisions on whether FIPPA or the Municipal Freedom of Information and Protection of Privacy Act are most appropriate would be made in the context of the governance structures, with regard to the smart meter entity.

The government is proposing amendments to deal with privacy issues raised by stakeholders, and we'll continue to consult with the IPC on these matters: I make reference to section 53.8, subparagraph i of paragraph 1; section 53.20 will be regulation (e) dealing with this issue.

We will deal with those matters as we get to them. James, our lawyer, can provide any additional information you may want, because this is a serious matter and we take this seriously. James, maybe I could just defer to you.

1040

Mr. Rebob: Just to add to Mr. Leal's sound analysis, the protection of privacy of the designation for FIPPA or MFIPPA purposes is done by way of regulation. It's important to understand that the structure and governance of the smart metering entity is maturing. It would be, we think, premature to designate under one versus the other statute until this structure has actually matured. We are very confident and comfortable that the amendment adding the institution to either FIPPA or MFIPPA can be done by regulation at a later time, once we have settled on the governance and structure attributes of the smart metering entity.

The Chair: Any further questions and comments on NDP motion 5? Seeing none, we'll proceed to the vote.

All those in favour of NDP motion 5? All those opposed? I declare NDP motion 5 lost.

We'll now proceed to the next motion, again from the NDP, motion 6.

Mr. Hampton: This deals with section 2 of schedule B to the bill, which is paragraph 5 of section 53.8 of the Electricity Act, 1998.

I move that paragraph 5 of section 53.8 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

"5. Except if the capacity to transfer the data exists in established telecommunications systems in Ontario, to own or lease and to operate a telecommunication system that permits the transfer of data about the consumption or use of electricity to and from its databases and telecommunication equipment and technology and any associated technologies and systems, directly or indirectly, including through one or more subsidiaries, if the smart metering entity is a corporation."

The Chair: Any questions and comments?

Mr. Leal: We won't be supporting this amendment. The government clearly recognizes the ability and existence of telecom companies in Ontario today. It is our expectation that they will play a critical role as we move forward in this area. Some areas of the province, however, are currently underserved, and Bill 21, as drafted, provides the flexibility to have the entity involved in addressing this and ensuing telecom infrastructure to make sure it's appropriate to our needs in this province.

The Chair: Are there any further questions and comments? Seeing none, we'll proceed to the vote.

All those in favour of NDP motion 6? All those opposed? I declare NDP motion 6 lost.

We'll now proceed to motion 7 from the government.

Mr. Leal: I move that paragraphs 2, 3, 4, 5, 7 and 8 of section 53.8 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

"2. To collect and manage and to facilitate the collection and management of information and data and to store the information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from distributors and, if so authorized, to have the exclusive authority to collect, manage and store the data.

"3. To establish, to own or lease and to operate one or more databases to facilitate collecting, managing, storing and retrieving smart metering data.

"4. To provide and promote non-discriminatory access, on appropriate terms and subject to any conditions in its licence relating to the protection of privacy, by distributors, retailers, the OPA and other persons,

"i. to the information and data referred to in paragraph 2, and

"ii. to the telecommunication system that permits the smart metering entity to transfer data about the consumption or use of electricity to and from its databases, including access to its telecommunication equipment, systems and technology and associated equipment, systems and technologies.

"5. To own or to lease and to operate equipment, systems and technology, including telecommunication equipment, systems and technology that permit the smart metering entity to transfer data about the consumption or use of electricity to and from its databases, including owning, leasing or operating such equipment, systems and technology and associated equipment, systems and technologies, directly or indirectly, including through one or more subsidiaries, if the smart metering entity is a corporation.

"7. To procure, as and when necessary, meters, metering equipment, systems and technology and any associated equipment, systems and technologies on behalf of distributors, as an agent or otherwise, directly or indirectly, including through one or more subsidiaries, if the smart metering entity is a corporation.

"8. To recover, through just and reasonable rates, the costs and an appropriate return approved by the board associated with the conduct of its activities."

The Chair: Any questions and comments? Seeing none, we'll proceed to the consideration of government motion 7. All those in favour? All those opposed? I declare government motion 7 carried.

We'll proceed to motion 8 from the NDP.

Mr. Hampton: This is section 2 of schedule B to the bill, section 53.8 of the Electricity Act.

I move that section 53.8 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be amended by adding the following subsections:

"Exception, owning, installing etc. smart meters

"(2) Despite paragraphs 1 and 7 of subsection (1), the smart metering entity shall not own, install, verify or maintain smart meters where local distributors have the ability to do so.

"Exception, collection and transfer of data

"(3) Despite paragraph 2 of subsection (1), if on or before the day this section comes into force local distributors collect and store the data and information re-

quired by the smart metering entity, the local distributors shall continue to do so.”

The Chair: Any questions or comments?

Mr. Leal: We won't be supporting this amendment. We've agreed with the EDA that local distributors would continue to own, install, operate and maintain smart meters. Enshrining this in legislation, however, precludes many innovative business models that have been emerging with respect to the ownership and other functions. We want to encourage innovation and best-cost models for Ontario consumers. Also, this defeats the purpose of centralizing data collection and storage and would duplicate the infrastructure investment required, at the expense of ratepayers in Ontario.

Mr. Hampton: I think we heard very clearly, from a number of local distributors and from CUPE, that establishing another bureaucracy or establishing another business entity when one already exists and is already doing this work simply adds to the cost and adds ultimately to the hydro bill for the consumer. I find it interesting that the government wouldn't support this amendment.

The Chair: Any further questions and comments? Seeing none, we'll move to the consideration of the motion. All those in favour of NDP motion 8? All those opposed? I declare NDP motion 8 lost.

We'll now consider the next motion, number 9, from the PC Party. Mr. Yakubski, I invite you to present motion 9.

Mr. Yakubski: This is section 2 of schedule B to the bill, subsections 53.8(2) and (3) of the Electricity Act, 1998.

I move that section 53.8 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be amended by adding the following subsections:

“Data kept private and not sold

“(2) The data collected by or on behalf of the smart metering entity or distributors related to the metering of consumers' consumption or use of electricity shall be kept private and shall not be sold for commercial purposes.

“Privacy laws apply

“(3) Nothing in this act abrogates or derogates from any act that protects the privacy of any data referred to in subsection (2).”

The Chair: Any further questions or comments?

Mr. Leal: We won't be supporting this amendment. As I previously indicated with Mr. Hampton's amendment, we are dealing with this issue and certainly believe that protection of privacy is indeed important, and as we move through the amendments, our lawyer from the Ministry of Energy has already commented about going down the road and our amendments to protect privacy of information with this data.

Mr. Yakubski: We'll be looking forward to those amendments, because I think the ensuring of privacy is important. We'll be looking forward to seeing those.

Mr. Leal: I agree. You're absolutely correct, sir.

The Chair: Seeing no further questions and comments, we'll proceed to consideration. All those in

favour of PC motion 9? All those opposed? I declare the motion lost.

1050

We'll now consider motion 10, again from the NDP. Mr. Hampton.

Mr. Hampton: I move that section 53.9 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be amended by adding the following subsection:

“Provincial Auditor

“(2) The Provincial Auditor shall audit the accounts and transactions of the smart metering entity.”

If I may, the government has announced with great fanfare that it thinks the Provincial Auditor should be looking at the accounts and financial transactions of other public institutions like school boards. This will be potentially a very big, very expensive entity, which will have all kinds of intrusive behaviour in terms of the lives of individual consumers. I would think that, as a bare minimum, we would want the Provincial Auditor to be able to look at the financial activities of the smart metering entity.

The Chair: Any further questions or comments?

Mr. Leal: We won't be supporting this amendment. The selection of an auditor will be made in the context of governance and structure decisions with respect to the auditor. If an existing entity is chosen to be the smart metering entity, they will already have auditing arrangements in place. I could use the example of the PUS in Peterborough, the Peterborough Utility Service, which is a municipally owned operation. If indeed that would be a part of the smart meter entity, subject to audit, it has an auditing procedure in place that's very comprehensive, since I've been through it on many occasions. That would provide the transparency and accountability to the public.

Mr. Hampton: I just want to be clear on this. If this were the Ministry of Energy engaging in this work and this activity, the auditor would quite properly be able to go in and look at the financial transactions of the Ministry of Energy. But if the McGuinty government sets up something vaguely known as the smart metering entity, it can have all kinds of costs and financial transactions and the Provincial Auditor would not be able to look at the financial activities and transactions of this.

I find it hard to believe. According to the McGuinty government, all you have to do to escape the Provincial Auditor is set up something so vague as an entity and then exclude the Provincial Auditor and you get outside the capacity of the Provincial Auditor to look at what's going on. Boy, this really sounds like it's terribly accountable here.

Mr. Leal: Frankly, we've gone to great lengths as a government to strengthen the Auditor General's position in Ontario. We've lifted the veil of secrecy on OPG, which allowed sunshine to finally shine on that particular entity. Maybe Rosalyn or James might like to comment on the auditing function.

Mr. Rehob: I would simply add to Mr. Leal's comments that, by regulation, there are a number of options that we have with respect to the creation, governance and

structure associated with a smart metering entity. Like some of the other concerns we've heard, we have the regulatory authority to address many of the issues as regards privacy. On the front of the Provincial Auditor being the auditor, we have the authority to designate an existing entity such as Hydro One or the IESO or any other entity. To enshrine in legislation that the Provincial Auditor will audit the entity would be at odds with existing practices if either of those entities, particularly the IESO, were to be audited by the Provincial Auditor or, as Mr. Leal mentioned, if the structure were to include municipally owned distributors. Their audit arrangements are already in place and have, in some cases, extremely sophisticated audit arrangements, which we would be disrupting.

Mr. Yakabuski: I'm concerned. This is a provincial initiative by the Ministry of Energy, of course. Is it an attempt to avoid the scrutiny of the auditor, who acts as the public guardian in so many ways and is the entity that people turn to when they want to know whether they're getting value for money from the provincial government. Is this an attempt to protect this entity from that? I don't know. If it's going to be under the umbrella of some auditable portion of government, that's another story, but we don't see that. I think the amendment is something the government should consider very seriously.

Mr. Leal: We certainly believe strongly in transparency. We also believe in the value of the Auditor General to scrutinize and improve transparency and make sure that there's value for money. I recall that when we became the government in 2003, the former Auditor General, Mr. Peters, produced a report that certainly contained what one might describe as a few surprises. We've gone to great lengths to make sure that as all political parties move into the election of 2007, the auditor of the day will certify the books to make sure that the transparency is there for the electorate to see.

Mr. Yakabuski: In response to Mr. Leal, who wanted to make a political statement, of course there'll be no surprises if the Auditor General doesn't get to see the books. It's pretty hard to uncover any surprises if he doesn't get to look at them. I think that's an important distinction.

Mr. Hampton: I find it really intriguing. The government wants to boast about bringing Ontario Power Generation and Hydro One under the auspices of freedom of information, the government wants to boast about its own financial accountability, but here the government wants to create a very vague institution. We know that this institution may be doing business possibly in the order of \$2 billion, but the government doesn't want the Provincial Auditor, now known as the Auditor General, to be able to go anywhere near it. I find that very revealing.

Mr. Leal: I reiterate that, frankly, if LDCs across Ontario emerge as the smart meter entity—and that's a possibility—the track record of LDCs in terms of auditing functions throughout this province is second to none. I would be careful moving in the direction of suggesting that municipal utilities have not been fully

accountable and fully transparent. They have an excellent record in that area.

Mr. Hampton: I don't think anyone is talking about the LDCs; we're talking about the government.

Mr. Yakabuski: We're talking about the smart metering entity here—that mysterious word "entity."

The Chair: Are there any further questions and comments? Seeing none, we'll proceed to the vote. All those in favour of NDP motion 10? All those opposed? I declare NDP motion 10 lost.

We'll proceed now to the next motion, government motion 11. Mr. Leal.

Mr. Leal: I move that section 53.16 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

"Obligations of distributors, etc., re: installing meters"

"53.16(1) When a distributor or any person licensed by the board to do so installs a smart meter, metering equipment, systems and technology and any associated equipment, systems and technologies or replaces an existing meter, the distributor or person shall use a meter, metering equipment, systems and technology and associated equipment, systems and technologies of a type, class or kind prescribed by regulation or that meets the criteria or requirements prescribed by regulation or mandated by a code issued by the board or by an order of the board for the classes of property or classes of consumers prescribed by regulation or required by the board.

"Same"

"(2) A regulation, code or order referred to in subsection (1) may require that a distributor or other person take certain actions and may require that the actions be taken within a specified time.

"Exclusive authority of board"

"(3) A regulation referred to in subsection (1) may provide the board with exclusive authority to approve or authorize the meters, the metering equipment, systems and technology and associated equipment, systems and technologies after a prescribed date.

"Obligations of distributors, etc., re: procurement, contracts or arrangements"

"(4) When a distributor or any person licensed by the board to conduct the activities referred to in subsection (1) enters into a procurement process, contract or arrangement in relation to the smart metering initiative, the procurement process, contract or arrangement shall meet the criteria or requirements prescribed by regulation or mandated by a code issued by the board or by an order of the board."

1100

The Chair: Any questions or comments? Seeing none, we'll proceed to consideration. All those in favour of government motion 11? All those opposed? I declare government motion 11 carried.

We'll proceed to the next motion, PC motion 12. I invite you, Mr. Yakabuski, to present PC motion 12.

Mr. Yakabuski: I move that section 53.16 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be amended by adding the following subsection:

“Consumer choice

“(3) Despite subsection (1) and any regulation under this act or code issued by the board or order of the board, a consumer shall be provided with choice in the type of smart meter to be installed in respect of the consumer’s premises, including but not limited to a choice between a one-way and two-way smart meter.”

The Chair: Any discussion, questions or comments on this particular motion 12?

Mr. Leal: We will not be supporting this motion. The government is committed to procuring meters in a manner that best ensures quality standards at the lowest possible cost through economies of scale and in a consistent manner across the province to ensure technical harmony. Beyond the base system and architecture, we anticipate that consumers will have abundant choice to tailor smart metering to their own particular needs and situations through innovative product offerings and others. For example, when we were in the great city of Chatham, I referred to the retrofit project, all at a cost of \$1.29. They incorporated technology that would allow them to retrofit existing meters. So there’s a wide range of activities out there, and we wouldn’t want to restrict consumers in making their choices.

The Chair: Any further discussion? Seeing none, we’ll proceed to the vote. All those in favour of PC motion 12? All those opposed? I declare PC motion 12 lost.

We’ll proceed now to the next motion, government motion 13. I invite you to present it, Mr. Leal.

Mr. Leal: I move that part IV.2 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be amended by adding the following section:

“Sub-metering: condominiums

“53.16.1(1) Despite the Condominium Act, 1998 and any other act, a distributor and any other person licensed by the board to do so shall, in the circumstances prescribed by regulation, install a smart meter, metering equipment, systems and technology and associated equipment, systems and technologies or smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies of a type prescribed by regulation, in a property or class of properties prescribed by regulation at a location prescribed by regulation and for consumers or classes of consumers prescribed by regulation at or within the time prescribed by regulation.

“Non-application of registered declaration

“(2) If a smart meter or smart sub-metering system is installed in accordance with subsection (1) in respect of a unit of a condominium, the distributor, retailer or any other person licensed to conduct activities referred to in subsection (1) shall bill the consumer based on the consumption or use of electricity by the consumer in respect of the unit despite a registered declaration made in accordance with the Condominium Act, 1998.

“Priority over registered declaration

“(3) Subsection (2) applies in priority to any registered declaration made in accordance with the Condominium Act, 1998 or any bylaw made by a condominium

corporation registered in accordance with that act and shall take priority to the declaration or bylaw to the extent of any conflict or inconsistency.

“Exclusive authority of board

“(4) A regulation referred to in subsection (1) may provide the board with exclusive authority to approve or authorize, after a prescribed date,

“(a) the smart meter, metering equipment, systems and technology and any associated equipment, systems and technologies; and

“(b) the smart sub-metering systems, equipment and technology and any associated equipment, systems and technologies.”

The Chair: Any questions and comments? Seeing none, we’ll proceed to consideration of the government motion. All those in favour of government motion 13? All those opposed? I declare that motion carried.

We’ll proceed to the next motion, government motion 14.

Mr. Leal: I move that section 53.17 of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

“Prohibition re: discretionary metering activities

“53.17(1) On and after November 3, 2005, no distributor shall conduct discretionary metering activities unless the distributor is authorized to conduct the activity by this act, a regulation, an order of the board or a code issued by the board or it is required to do so under the Electricity and Gas Inspection Act (Canada).

“Definition

“(2) For the purpose of this section,

“‘discretionary metering activity’ means the installation, removal, replacement or repair of meters, metering equipment, systems and technology and any associated equipment, systems and technologies which is not mandated by the Electricity and Gas Inspection Act (Canada), by regulation, by an order of the board or by a code issued by the board or authorized by a regulation made under this act.”

The Chair: Any discussion, questions and comments on government motion 14? Seeing none, we’ll proceed to the vote. All those in favour of government motion 14? All those opposed? I declare that motion carried.

We’ll proceed now to motion 15, from the NDP.

Mr. Hampton: This deals with section 2 of schedule B to the bill, which is part IV.2 of the Electricity Act, 1998.

I move that part IV.2 of the Electricity Act, 1998, as set out in section B to the bill, be amended by adding the following section:

“Tenancy agreements preserved

“53.17.1 Nothing in this part permits a landlord to alter or amend a residential tenancy agreement to which the Tenant Protection Act, 1997 applies without the consent of the tenant.”

Once again, the rationale for this is to ensure, in whatever the government decides to do here, protections for tenants that are written into the Tenant Protection Act, 1997, are not otherwise overridden or disturbed via the back door.

Mr. Leal: I think I've already commented on this in a very clear and precise fashion. Nothing in Bill 21 alters the Tenant Protection Act. It will continue to apply in these situations. We'll be working with tenant groups and municipalities and other interested groups to ensure that we can address multi-residential rental units over the medium term.

One of the things I'll be doing over the next little while is meeting with these groups and looking at some ideas to address some of their particular concerns; for example, setting up, particularly in social housing, energy storage units, which allow energy to be stored when it's purchased at a lower level and then utilized traditionally when they would be utilizing electricity at higher price areas. Again, one of the best examples of that is the LDC in Peterborough, which has launched this initiative of energy storage units.

The Chair: Any further discussion?

Mr. Leal: Mr. Yakabuski doesn't like me to get Peterborough on too often, but I want to—

Interjection.

The Chair: Seeing no further formal discussion, we'll proceed to the motion. All those in favour of NDP motion 15? All those opposed? I declare NDP motion 15 lost.

We'll proceed to government motion 16.

1110

Mr. Leal: I move that clause 53.18(1)(b) of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

“(b) under any contract that relates to a procurement that was entered into by the crown or an agency of the crown pursuant to a request for proposal, a draft request for proposal or another form of procurement solicitation referred to in clause (a).”

The Chair: Are there any further comments, questions, discussion? Seeing none, we will proceed to the vote. All those in favour of government motion 16? All those opposed? I declare government motion 16 carried.

We will proceed to the next motion, government motion 17. Mr. Leal.

Mr. Leal: I move that subsection 53.20(1) of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be amended by adding the following clause:

“(e.1) governing the collection, use and disclosure of information relating to consumers' consumption or use of electricity, including personal information.”

The Chair: Any further questions and comments? Seeing none, we will proceed to the vote. All those in favour of government motion 17? All those opposed? I declare government motion 17 carried.

We will proceed to government motion 18. Mr. Leal.

Mr. Leal: I move that clauses 53.20(1)(j) and (k) of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

“(j) governing smart meters and the installation and maintenance of smart meters, metering equipment, systems and technology and any associated equipment, systems and technologies;

“(k) identifying actions to be taken by the smart metering entity, distributors and other persons licensed by the board in respect of the installation of prescribed meters, metering equipment, systems and technology and any associated equipment, systems and technologies at prescribed locations throughout Ontario or for prescribed classes of properties and prescribed classes of consumers in priority to other locations or classes of property or classes of consumers and prescribing the time within which such actions must be taken;

“(k.1) prescribing the date for the purpose of subsections 53.16(3) and 53.16.1(4), as the case may be;

“(k.2) prescribing criteria or requirements that the procurement process, contract or arrangement must meet for the purpose of subsection 53.16(4);

“(k.3) governing the installation of smart meters and smart sub-metering systems for the purposes of section 53.16.1, including sub-metering equipment and technology and any associated equipment, systems and technologies;

“(k.4) prescribing the circumstances in which smart meters or smart sub-metering systems shall be installed under section 53.16.1, including sub-metering equipment and technology and any associated equipment, systems and technologies, the property or classes of property in which they are to be installed, the consumers or classes of consumers for which they are to be installed and the time by or within which they must be installed;

“(k.5) authorizing activity as discretionary metering activity for the purpose of section 53.17.”

The Chair: Any discussion, questions and comments? Seeing none, we will proceed to the vote. Those in favour of government motion 18? All those opposed? I declare government motion 18 carried.

We will proceed to the next motion, government motion 19. Mr. Leal.

Mr. Leal: I move that clause 53.20(1)(n) of the Electricity Act, 1998, as set out in section 2 of schedule B to the bill, be struck out and the following substituted:

“(n) approving, with respect to a class of consumers, meters or a class of meters and metering equipment, systems and technology and associated equipment, systems and technologies to be installed by a distributor or a person licensed by the board to do so, including approving or fixing the maximum costs of the meters and metering equipment, systems and technology and associated equipment, systems and technologies and specifying criteria which any one of them must meet.”

The Chair: Any further questions, comments, discussion? Seeing none, we will proceed to the vote. All those in favour of government motion 19? All those opposed? I declare government motion 19 to have carried.

I thank the committee for the consideration of the 14 amendments for schedule B, section 2, and now ask, shall section 2 of schedule B, as amended, carry? Any opposed? I declare section 2, schedule B, as amended, to have carried.

I advise the committee that we have no presented amendments for schedule B, section 3, so I'll move

directly to the consideration of that. Shall section 3 of schedule B carry? Any opposed? That's carried.

We'll now proceed to the full consideration of schedule B, as amended. Shall schedule B, as amended, carry? None opposed? Carried.

We'll now proceed to the consideration of schedule C, section 1, for which we have three amendments proposed, beginning with government motion 20. Mr. Leal.

Mr. Leal: I move that the definition of "smart meter" in section 3 of the Ontario Energy Board Act, 1998, as set out in section 1 of schedule C to the bill, be struck out.

The Chair: Any further questions, comments, discussion? Seeing none, we'll proceed to the vote. Those in favour of government motion 20? Any opposed? I declare that motion to have carried.

We'll proceed to the next motion, government motion 21. Mr. Leal.

Mr. Leal: I move that the definition of "smart metering initiative" in section 3 of the Ontario Energy Board Act, 1998, as set out in section 1 of schedule C to the bill, be struck out and the following substituted:

"'smart metering initiative' means those policies of the government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters;" and the equivalent en français.

The Chair: Any questions, comments or discussion? Seeing none, we will move to the vote. Those in favour of government motion 21? Those opposed? I declare government motion 21 to have carried.

We will proceed to consideration of motion 22 from the NDP regarding new subsection (2). Mr. Hampton.

Mr. Hampton: I move that section 3 of the Ontario Energy Board Act, 1998, as set out in section 1 of schedule C to the bill, be amended by adding the following subsection:

"Tenancy agreements preserved

"(2) Nothing in this act permits a landlord to alter or amend a residential tenancy agreement to which the Tenant Protection Act, 1997 applies without the consent of the tenant."

The Chair: Are there any further questions or comments?

Mr. Leal: I've already spoken on this. This will not interfere with the provisions of the Tenant Protection Act, 1997.

The Chair: Any further discussion, questions, comments? Seeing none, we'll proceed to the vote. All those in favour of NDP motion 22? All those opposed? I declare NDP motion 22 to have lost.

We've now completed the consideration of amendments for section 1, and I therefore ask, shall section 1 of schedule C, as amended, carry? Any opposed? I declare section 1, schedule C, as amended, carried.

We'll now move to consideration of schedule C, section 2, government motion 23. Mr. Leal.

Mr. Leal: I move that paragraphs 4 and 5 of subsection 28.3(2) of the Ontario Energy Board Act, 1998, as set out in section 2 of schedule C to the bill, be struck out and the following substituted:

"4. Conditions identifying arrangements and agreements, including procurement, service or operating arrangements or agreements, to be entered into by the smart metering entity, distributors, transmitters, retailers or other persons and providing that the arrangements or agreements must contain specific conditions, restrictions, criteria or requirements relating to the arrangements or agreements.

"5. Conditions providing for circumstances in which the smart metering entity shall provide a person with access to information and data relating to consumers' consumption or use of electricity collected pursuant to paragraph 2 of section 53.8 of the Electricity Act, 1998, including conditions relating to the protection of privacy."

The Chair: Any further questions or comments? Any discussion? Seeing none, we'll proceed to the vote. All those in favour of government motion 23? Any opposed? I declare government motion 23 to have carried.

We'll proceed to the next motion, government motion 24. Mr. Leal.

Mr. Leal: I move that paragraph 7 of subsection 28.3(2) of the Ontario Energy Board Act, 1998, as set out in section 2 of schedule C to the bill, be struck out and the following substituted:

"7. Conditions providing the minister with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers.

"8. After a date prescribed by regulation made under the Electricity Act, 1998, conditions providing the board with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers."

1120

The Chair: Discussion? Questions? Comments? Seeing none, we'll proceed to the vote. All those in favour of government motion 24? Any opposed? I declare government motion 24 to have carried.

Having considered the proposed amendments for section 2, I now ask, shall section 2 of schedule C, as amended, carry? I declare that section of schedule C, as amended, to have carried.

There are no proposed amendments so far for schedule C, section 3, so I ask directly, shall section 3 of schedule C carry? That's carried.

We'll now proceed to the consideration of the next. There no proposed amendments for section 4, schedule C, so I move directly, shall section 4, schedule C carry? Carried.

I now move to consideration of the next proposed amendment for schedule C, section 5, government motion 25.

Mr. Leal: I move that section 78 of the Ontario Energy Board Act, 1998, as set out in subsection 5(1) of schedule C to the bill, be amended by adding the following subsection:

“Orders re recovery of smart metering initiative costs

“(3.0.3) The board may make orders relating to the ability of the smart metering entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative, in the situations or circumstances prescribed by regulation and the orders may require them to meet such conditions or requirements as may be prescribed, including providing for the time over which costs may be recovered.”

The Chair: Are there any questions, comments, discussion points?

Mr. Yakubuski: It sounds to me like the consumer's getting ready to be hit here. We've been talking about the costs of this program for a long time. The government doesn't seem to really have any idea what this is going to cost, but I think the consumers of the province could be in for one of those surprises that Mr. Leal speaks of. Hopefully, it's not too egregious, but it looks like the consumer and the taxpayer will be paying the bill here.

Mr. Leal: I do appreciate and respect the comments put forward by Mr. Yakubuski. Again, I defer to the fairly extensive pilot that was initiated in Chatham-Kent. All-in costs with Chatham-Kent were \$1.29 for their smart meter initiative.

Mr. Yakubuski: Can we take that as a commitment as to what the cost of this will be?

Mr. Leal: Those numbers have been verified by a very, very distinguished accounting firm, Deloitte. Here at Queen's Park we often have different bureaus of statistics that are putting out information, but when you have a comprehensive pilot like we have in Chatham-Kent and their results are verified by, as I said, a very distinguished accounting firm, I think that provides an opportunity for consumers throughout the rest of the province to glean appropriate and accurate information on what the cost might be.

Mr. Yakubuski: I would assume that you're making a commitment to the people of Ontario, then, that you'll be able to do this for \$1.29 a meter. We'll be watching for that and appreciate those statements there. We certainly know that you guys are at least as good as Chatham-Kent Hydro, no?

Mr. Leal: I think the pilot in Chatham-Kent certainly provides a very detailed opportunity as to what the costs might be for smart metering.

The Chair: Any further questions, comments, discussion? Seeing none, we'll proceed to the vote. All those in favour in government motion 25? Any opposed? Thank you. I declare government motion 25 to have carried.

Having considered the proposed amendments for that section, we will now ask directly, shall section 5 of schedule C, as amended, carry? Carried.

We'll proceed to the next section, schedule C, section 6, government motion 26.

Mr. Leal: I move that subsection 88(1) of the Ontario Energy Board Act, 1998, as set out in section 6 of schedule C to the bill, be amended by adding the following clause:

“(g.6.2) in respect of orders relating to the ability of the smart metering entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative for the purposes of subsection 78(3.0.3).”

The Chair: Any further questions, comments or discussion? Seeing none, we'll proceed to the vote. All those in favour of government motion 26? All those opposed? I declare government motion 26 to have carried.

We'll now proceed to the consideration of that section. Shall section 6 of schedule C, as amended, carry? Carried.

We'll proceed to the next section, schedule C, section 7, government motion 27.

Mr. Leal: I move that clause 112.1(b) of the Ontario Energy Board Act, 1998, as set out in section 7 of schedule C to the bill, be struck out and the following substituted:

“(b) section 25.33, 25.34, 26, 27, 28, 29, 31, 53.11, 53.13, 53.15, 53.16, 53.16.1 or 53.17 of the Electricity Act, 1998, or any other provision of that act that is prescribed by the regulations.”

The Chair: Are there any comments, questions or discussion on this final proposed amendment for clause-by-clause? Seeing none, we'll proceed to the vote. All those in favour of government motion 27? All those opposed? I declare government motion 27 to have carried.

Shall section 7 of schedule C, as amended, carry? Carried.

There are no proposed amendments for section 8, so I'll move directly, shall section 8 of schedule C carry? Carried.

Now for consideration of the entire schedule C. Shall schedule C, as amended, carry? Carried.

We'll, with the committee's will, block consideration of sections 1 and 2 of schedule D, for which no amendments have so far been proposed. Shall those sections of schedule D carry? Carried.

Shall schedule D carry? Carried.

We'll now proceed to the consideration of the block sections. If it's the will of the committee, we'll consider sections 1, 2 and 3 en masse. Shall those sections carry? I declare those sections to have carried.

Shall the short title of the bill carry? Carried.

Shall Bill 21, as amended, carry? Carried.

Is it the will of the committee that I report the bill, as amended, to the House today? Carried.

If there's no further business of the committee—seeing none, I declare clause-by-clause committee consideration adjourned.

The committee adjourned at 1129.

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Mr. Jeff Leal (Peterborough L)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Also taking part / Autres participants et participantes

Ms. Rosalyn Lawrence, director, consumer and regulatory affairs branch,

Mr. James Rebob, legal counsel,

Ministry of Energy

Clerk / Greffier

Mr. Katch Koch

Staff / Personnel

Mr. Albert Nigro, legislative counsel



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Wednesday 29 March 2006

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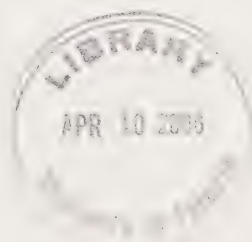
Mercredi 29 mars 2006

Standing committee on
justice policy

Organization

Comité permanent
de la justice

Organisation



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Wednesday 29 March 2006

COMITÉ PERMANENT
DE LA JUSTICE

Mercredi 29 mars 2006

The committee met at 1005 in committee room 1.

ELECTION OF CHAIR

The Clerk of the Committee (Ms. Anne Stokes): Good morning, everyone. I'd like to welcome you to the justice policy committee. Honourable members, it is my duty to call upon you to elect a Chair. Are there any nominations?

Mr. Bas Balkissoon (Scarborough–Rouge River): I move that Vic Dhillon be appointed Chair.

The Clerk of the Committee: Thank you. Are there any further nominations?

Mr. Peter Kormos (Niagara Centre): I move that Maria Van Bommel be Chair of this committee. She has skills and talents that would make her an outstanding Chair of this committee, and I want there to be a true contest in this democratic process wherein we purport to elect a Chair of a committee. I don't want it to be suggested that somehow this is a done deal, that the fix is in, that the Premier's office, or the whip or the government House leader's office has somehow told his people who's going to be the next Chair. If we're going to elect a Chair, let's elect a Chair.

The Clerk of the Committee: Thank you. Are there any further nominations?

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): I apologize. I was going to nominate Peter Kormos, with all his skills and talents, but I'd better not do that because people might think that the fix was in and that I was in cahoots, so I won't do that.

The Clerk of the Committee: Are there any further nominations?

Mr. Kormos: I want to nominate Lorenzo Berardinetti, the passionate advocate for equality and justice, the civil rights leader of the Liberal caucus.

Mr. Lorenzo Berardinetti (Scarborough Southwest): Thank you. That's the nicest thing you've said about me.

The Clerk of the Committee: Thank you, Mr. Kormos. Are there any further nominations?

Mr. Kormos: I want to nominate Bas Balkissoon, newly elected, who I'm sure was promised a position in cabinet during the course of being wooed by the Liberals for the by-election and who so far has been frustrated, waiting eagerly for Gerard Kennedy to resign as Minister of Education, to create yet one more vacancy. I can't think of a more fitting position for him, plus another 12

grand or 13 grand a year in salary, than to be Chair of this committee.

The Clerk of the Committee: Thank you. Are there any further nominations?

Mr. McMeekin: I think maybe we should have four Chairpeople, since Peter thinks so many of us on this side of the House are so qualified.

The Clerk of the Committee: Mr. Kormos?

Mr. Kormos: I want to nominate Ted McMeekin. Once again, Ted McMeekin is neither shy nor withdrawn. He's a gregarious type, he has good people skills, he can BS with the best of them. It's a compliment, sir. What better set of skills, what better skill set than that of Mr. McMeekin? He also has seniority. In view of the tight relationship between the Liberal Party and Bob Rae and Buzz Hargrove, I think seniority is something that should be given greater effect to in the course of making these selections.

The Clerk of the Committee: Are there any further nominations? There being no further nominations, the practice of the assembly in the election of a Chair, when there is more than one nomination, is that a vote is first put on the first nomination. The first nomination was for Mr. Dhillon.

I will put the question. All those in favour? All those opposed? Mr. Dhillon has been duly elected Chair of the committee.

Would you come forward, please? Thank you.

1010

ELECTION OF VICE-CHAIR

The Chair (Mr. Vic Dhillon): Good morning, everybody. Members, it is my duty now to call upon you to elect the Vice-Chair. Are there any nominations?

Mr. Balkissoon: Since my colleague on the other side has so much confidence in Maria Van Bommel, I would like to move that Maria Van Bommel be elected as the Vice-Chair.

Mr. McMeekin: You convinced me, Peter.

Mr. Kormos: I want to nominate Lorenzo Berardinetti. I find it disturbing that a woman is relegated to Vice-Chair when in fact, if we were concerned and interested in ensuring that women had the same access to stature, status and power as men, she'd have been nominated and supported by her colleagues as Chair. I'd invite you,

Chair, to withdraw, to resign, to surrender your position so that a woman could take this position.

Mr. McMeekin: I just want to quickly comment that Maria Van Bommel is certainly recognized by her colleagues for her outstanding leadership. That's why, notwithstanding the numerous male candidates to chair the rural caucus, Maria was not only nominated but elected overwhelmingly by her colleagues.

The Chair: Are there any other nominations? Fine. If there are no further nominations, I'm going to put the question for the election of the Vice-Chair.

Mr. Kormos: On a point of order, Mr. Chair: If there are no further nominations, it's an acclamation.

Interjection.

Mr. Kormos: Lorenzo shook his head. He said no way could he assume that responsibility.

The Chair: Since there is only one nomination—

Mr. Berardinetti: On a point of order, Mr. Chair: That was a sore neck. It was more to do with my sore neck than—

Mr. Kormos: From what?

Mr. Berardinetti: That's between my wife and me.

Mr. Kormos: We'll send that transcript to Mrs. Berardinetti.

Mr. Berardinetti: She's watching.

The Chair: Could we have order, please? Since there are no other nominations, Mrs. Van Bommel is the Vice-Chair for this committee.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you.

SUBCOMMITTEE MEMBERSHIP

The Chair: The next order of business—

Interjection.

The Chair: Can I have your attention, please. The next order of business is to nominate a member for the subcommittee. Do I have any nominations?

Mr. Balkissoon: I move that the membership of the subcommittee on committee business be revised as follows: that Mr. Berardinetti be appointed in the place of Mr. Flynn.

The Chair: Any comments? All those in favour? All those opposed? Mr. Berardinetti is appointed to the subcommittee.

Is there any other business that you guys would like to discuss? Seeing that there is no further business, I declare this meeting adjourned.

The committee adjourned at 1015.

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Wednesday 26 April 2006

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Mercredi 26 avril 2006

Standing committee on justice policy

Access to Justice Act, 2006

Comité permanent de la justice

Loi de 2006
sur l'accès à la justice



Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
Greffière : Anne Stokes

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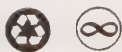
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 26 April 2006

Mercredi 26 avril 2006

The committee met at 1003 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. Vic Dhillon): Good morning and welcome to the meeting of the standing committee on justice policy. This morning we're going to be considering Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005.

Our first order of business today is to read the report of the subcommittee. Do I have somebody to volunteer to read the report?

Mr. Lorenzo Berardinetti (Scarborough Southwest): Mr. Chair, can I move the adoption of the report of the subcommittee?

The Chair: The report has to be read into the record. Sorry.

Mr. Berardinetti: Do you want me to read this into the record?

The Chair: Yes.

Mr. Berardinetti: The standing committee on justice policy subcommittee on committee business, report of the subcommittee:

Your subcommittee considered on Thursday, April 13, Monday, April 24, and Tuesday, April 25, 2006, the method of proceeding on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 14 on Wednesday, April 26, and Thursday, April 27, 2006.

(2) That an advertisement be placed for one day in the Toronto Star, Globe and Mail, National Post, Toronto Sun and Metro newspapers, and also be placed on the ONT.PARL channel, the Legislative Assembly website and in a press release.

(3) That the ad specify that opportunities for video conferencing and teleconferencing may be provided to accommodate witnesses unable to appear in Toronto.

(4) That the deadline for those who wish to make an oral presentation on Bill 14 be 5 p.m. on Friday, April 21, 2006.

(5) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will advise the Chair so that a subcommittee meeting may be

called to make decisions regarding meeting dates and witnesses to be scheduled.

(6) That additional days for public hearings be held in September before the House returns to hear from all those that have made requests to appear so far.

(7) That the time allotted to organizations and to individuals be subject to the discretion of the subcommittee to accommodate a broad range of witnesses with reasonable time limits.

(8) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill and background reviews prior to the public hearings.

(9) That the committee plan to meet for the purpose of clause-by-clause consideration of Bill 14 before the House returns in September at a date to be determined later.

(10) That each party make a statement for five minutes each at the beginning of public hearings.

(11) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(12) That requests for reimbursement of travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(13) That the committee meet in room 151, if possible, for public hearings and clause-by-clause consideration of Bill 14 depending on availability of the room.

(14) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Is there any debate?

Mr. Peter Kormos (Niagara Centre): Recorded vote, please.

The Chair: Mr. Kormos has asked for a recorded vote. If there's no debate, I'll put the question. All those in favour?

Ayes

Balkissoon, Berardinetti, Kormos, Oraziatti, Runciman, Van Bommel, Zimmer.

The Chair: Seeing that everyone is in favour, I declare the motion carried.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006

SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2005 sur la législation.

The Chair: The next order of business is, each of the parties will be making a statement for up to five minutes, and we'll begin with the official opposition.

Mr. Kormos: With respect, Chair, it's the government's bill. It seems to me that they should lead off any comments on it.

The Chair: That's fine. We can have a five-minute statement from the government side.

Mr. David Zimmer (Willowdale): Let me just take a very few minutes to outline or highlight the principal themes of Bill 14, the Access to Justice Act. We'll get into the details of it over the process of working this bill through the system, but just the principal themes.

This legislation, if passed, is going to modernize and improve people's access to the justice system. It'll provide greater openness, transparency and accountability. It will regulate paralegals, reform and streamline the justice of the peace system, amend the Provincial Offences Act, the Limitations Act, the Courts of Justice Act and create the new Legislation Act.

The Ministry of the Attorney General has consulted extensively on this bill, including meeting and speaking with the bar, the business community and consumer protection groups.

Regarding the amendments to the justice of the peace system, the proposed reforms to the justice of the peace system will ensure a more open and transparent appointment process and will establish minimum qualifications standards to ensure public confidence that qualified candidates will be appointed.

The proposed reforms would also increase flexibility in scheduling by providing for per diem justices of the peace who would be dedicated exclusively on a temporary basis to specific matters such as Provincial Offences Act proceedings. This is something that municipalities have been asking for.

Regarding the amendments to the Provincial Offences Act, these amendments will permit witnesses to be heard by videoconferencing or other electronic means, allowing police officers to provide evidence from locations outside of court and would also permit alternative mechanisms for resolving disputes arising from municipal bylaw infractions such as parking and the like. This also is something that has particular appeal to the municipal world.

Regarding the regulation of paralegals, the regulation of paralegals will increase access to justice by giving consumers a choice in qualified legal services, while at the same time protecting people who get advice from non-lawyers.

With respect to the amendments to the Limitations Act, these amendments to the act will increase confidence in the justice system by allowing businesses to reach their own arrangements on limitation periods and allow individuals to agree to extended limitation periods. This will facilitate business and the economy.

Regarding amendments to the Courts of Justice Act, these amendments will provide greater transparency and accountability in the justice system, including requiring publication of information of various court operations.

Regarding the new Legislation Act, briefly, this legislation will clarify how laws are published, used and cited and allow statutes and regulations published on the E-laws website to be used as the official version. This will bring aspects of the legal system in line with current high-tech electronic process, if you will.

These are just the principal themes and highlights of the proposed legislation. I look forward to getting into the detail as we work our way through this process.

1010

The Chair: Thank you, Mr. Zimmer. Mr. Runciman?

Mr. Robert W. Runciman (Leeds-Grenville): Thanks, Mr. Chairman. I appreciate the opportunity. I want at the outset to acknowledge the support of the government members with respect to the subcommittee report. That's very much appreciated. I know that Mr. Kormos and I, after receiving word from the clerk of the committee with respect to the numbers of people who wished to appear, felt it was critical that we have an opportunity for anyone who got in prior to the deadline date to appear before the committee and be heard. That has now been recognized by the government. I think there was considerable concern about the possibility of ramming through something as complex as this piece of legislation, with the wide range of ramifications in the justice area and the impacts on a whole range of Ontarians.

Mr. Kormos can speak for himself, as everyone knows, extremely well, but I think it's fair to say that both opposition parties were supportive of legislation coming forward that would provide for regulation of paralegals and that both opposition parties had indicated that to the government and to the Attorney General. In fact, on a number of occasions, Mr. Kormos actually encouraged the Attorney General to bring it forward.

Regrettably, from our perspective, when it did come forward, it was sort of a kitchen-sink catch-all with respect to a whole range of initiatives that make this a much more complicated initiative, to say the least. As a result, we're not able to deal with the paralegal question in as expeditious a fashion as I think most of us would have liked to have seen. But that's the reality. I know that Mr. Zimmer talked about the Attorney General consulting extensively. I think that would be a surprise to a lot of stakeholders and a lot of people who have expressed an interest in appearing before this committee once they became aware of some of the implications of this legislation.

Certainly, beyond the paralegal issue, we've heard over the past number of weeks a whole range of concerns about that issue, especially the so-called broad definition of legal services. I think it's fair to say that's a significant concern to a number of professions, and we'll be hearing from them over the course of our hearings. Hopefully, at the end of the day, we can address those concerns in a way that not only represents the interests of the proponents of this legislation but all those who have expressed concerns about the way it is currently drafted.

Going beyond that, in my opening comments in the Legislature I touched on a whole range of issues—the amendments to the Courts of Justice Act, the creation of this new position of chief administrator. We want to, through the course of this, pursue with government members and the Attorney General the rationale for that position and assurance that this is not another instance of building a bureaucracy. We'll be looking for an explanation of the binding authority change from the current situation.

We want to talk about what we describe as the defining matters within judicial authority and the AG and the chief justice's memorandum of authority. We think we require, and we're certainly looking for, an explanation for the need for the MOU in the judicial responsibilities.

We're also going to be looking at—my limitation on time here—this whole issue regarding the Ontario courts management advisory committee. We think this legislation could be an opportunity to remove what some people have viewed as biased screenings and introduce a role for the legislative branch. I know the government has talked about democratic renewal, and this could be an opportunity for the legislative branch, the elected officials in the assembly, to play a role. I think the mere fact of having open hearings would be popular, at least among non-lawyers, and hopefully would preclude any real ringers being appointed by the Attorney General.

The Chair: Thank you, Mr. Runciman. Mr. Kormos?

Mr. Kormos: First, I want to thank Philip Kaye, Avrum Fenson and Margaret Drent—who is here with us today, of course—who as legislative research officers provided us with some incredibly valuable background material. I appreciate their work on this.

This bill was introduced for first reading on October 27, 2005. Nobody here has to tell the government how you get legislation passed: You pass it by calling it for debate. The House sat through till mid-December 2005, and the bill wasn't called once for second reading debate. The government certainly didn't have it as a priority then. We returned for a three-week mini-session. Bill 14 wasn't a priority then. Finally, here we are in this spring session, the bill is called for second reading—not inappropriately; it's about time—and frankly receives considerable attention and participation in the debate, at least on the part of opposition parties and their members. We see this as very important legislation; it's been a long time coming.

There have been a whole lot of reports and studies and good thinking and hard thinking done around the whole

issue of the regulation of paralegals. But one of the impediments around Bill 14, and we said this on the occasion of first reading back in October, was that rather than come forward with a clean stand-alone bill regulating paralegals, the government came forward with an omnibus bill, making it far more difficult to focus on the issue of regulation of paralegals. I regret; I had every hope that this bill would be resolved by June 22, when the House rises for its summer break—quite frankly, I expect the government to sit here every single day up to June 22; none of this baloney about leaving a week or two early. If the government says it has bills to deal with, let's sit here in this Legislature and deal with them.

The opposition parties agreed—we acquiesced—to advertising these hearings only in Toronto newspapers, along with the legislative channel. That generated 109 submissions, plus more than a few others who were late and who still may well appeal to this committee to be heard. Had there been advertising across the province in smaller- and small-town Ontario, I am convinced, in view of the fact that Toronto advertising alone generated 109 submissions, there would have been at least 10 times that many. I regret that on a bill as significant as this, because it is significant legislation, there won't be the thorough and extensive and pan-provincial consultation that there should be. But we're prepared to, dare I say it, compromise in that regard, just as opposition parties were eager to find creative ways at the subcommittee level to accommodate 109 submitters without bending to suggestions from the government that only 10 minutes per submitter would be adequate. Unfortunately, there just wasn't the opportunity to get unanimity in terms of availability and scheduling to find a creative solution.

Understand, of course, that yesterday the government, which insists that it needs Bill 56 for third reading before the summer break, before June 22, on getting second reading voted of Bill 56, referred it to this very committee. That means there isn't a snowball's chance in hell not only of Bill 14 being completed in committee, but that Bill 56 will ever see the light of day. Yet the government insists that it's a priority that it has to pass—it's this emergency measures act, the phony one that does nothing about staffing police forces, firefighters or hospitals, the real responders to emergencies. It is indeed unfortunate.

1020

I recall pleading last spring with the Attorney General on almost a daily basis to get the paralegal regulation legislation into the House for first reading. We couldn't guarantee we'd finish second reading, but we were prepared to start and sure as heck try. But the bill was nowhere to be seen, and didn't see the light of day until October 27, 2005. Then I recall clearly, when Andrea Horwath, the member for Hamilton East, asked the Attorney General questions in the House about the shortage of JPs in Hamilton, that Mr. Bryant stood up and Harnicked, Harnicked, Harnicked—that's Harnick with a capital H, for the benefit of Hansard. In response to Andrea Horwath's questions, he Harnicked and said the failure of

Bill 14 to be passed prevented him from appointing an adequate number of JPs. That is an outright Harnick, Chair.

The Chair: Thank you very much.

LAW SOCIETY OF UPPER CANADA

The Chair: The next order of business is the public hearings. The first witnesses are the Law Society of Upper Canada, if they could please come up. You have 30 minutes to make your presentation. Any time remaining will be divided among the three parties for questions. Please state your names for the record.

Mr. Gavin MacKenzie: Good morning. My name is Gavin MacKenzie. I serve as the treasurer and head of the Law Society of Upper Canada, as we still quaintly call it. To my left is Malcolm Heins, who is the Law Society of Upper Canada's chief executive officer. In that capacity, Mr. Heins is the senior staff member and chief executive officer of the organization.

On behalf of the law society, let me thank you at the outset, Mr. Chairman and members of the committee, for the opportunity to speak to you this morning about Bill 14 and specifically about the paralegal regulation provisions of Bill 14, to which we're going to confine our remarks. We're looking forward to responding to any questions that members of the committee may have, and I'll try to be fairly brief in my opening remarks so that we can leave as much time as possible for questions.

The law society, as every member of the committee will know, is the regulatory body for the 35,000 lawyers in the province of Ontario. It was created by an act of the Legislature in 1797, hence the name, the Law Society of Upper Canada, and has been regulating lawyers' conduct for over 200 years. Its mandate is to govern the legal profession in the public interest.

I'll be confining my remarks this morning to those provisions of Bill 14 affecting the amendments to the Law Society Act specifically dealing with paralegal regulation. Those amendments are important to the law society, but they're more important to consumers of legal services in Ontario. That's because the amendments will fill a long-standing gap in consumer protection in the province. We commend the Attorney General for his leadership in attempting to fill that gap through these provisions of Bill 14. It's a difficult and controversial issue which has been outstanding for many years, as everybody here will know. There are many problems arising from the current lack of adequate consumer protection.

As you probably know, the law society was asked by the Attorney General to create a proposed structure for the regulation of paralegals in Ontario. We put together a task force which consulted with 60 stakeholders. Those included paralegal organizations, of course, and legal organizations and members of the public who were interested. During those consultations, the law society was told a number of horror stories by members of the public or about members of the public who had been ill served by unregulated paralegals.

To give you just one example, we were told about a woman who had very limited skills in the English language who was injured in a car accident in which she lost her hand. A paralegal settled the case on her behalf for \$47,000 and took half of the \$47,000 settlement. Fortunately, a lawyer was able to reopen the case later on. Again, it was only one of many disturbing stories we were told about people who were inadequately trained, who were completely unregulated, who do not have the rules of professional conduct governing their standards of competence and ethics that, for example, lawyers do.

Members of the public have had no recourse to a regulatory body to resolve their complaints in those situations. When problems arise in the provision of services by lawyers, the public can look to the law society to address those concerns. The effect of Bill 14 will be to give members of the public the same recourse in respect of paralegals that members of the public have with respect to members of the legal profession.

Some paralegals provide a very useful service to members of the public; for example, the many former police officers who very competently represent members of the public in traffic court. But today those people are unfairly linked in the public's mind with unscrupulous and incompetent paralegals who are unregulated and don't meet the standards of conduct or ethics that we expect of members of the legal profession.

The additional duties of regulating paralegals in the public interest can be accomplished, in our respectful submission, most efficiently, most effectively and most economically by the law society rather than by creating a new regulatory body. We've seen the experience of many self-governing professions around the world where a problem has been created by multiple regulators being created for like professions.

For example, in England and Wales there is one body to regulate solicitors, another to regulate barristers, a third to regulate legal executives, a fourth to regulate notaries and a fifth to regulate paralegals, and it has essentially created two problems. It has created a problem in that there is enormous public confusion about whom to contact when they have a complaint. It reduces accountability and creates inconsistencies in the administration of regulatory affairs for related professions.

It's for that reason, too, that we commend the Attorney General for suggesting the law society, which has been doing it very effectively, we like to think, generally speaking, for many years as far as the legal profession is concerned, which has the infrastructure, which has rules of professional conduct, which has professional liability insurance requirements so that people are protected in cases of misconduct or negligence on the part of lawyers. We have admission standards; we have systems for creating credentials. It's our respectful view that the law society is the organization that is best positioned to undertake the regulation of paralegals.

The development of the model embodied in the bill has been a collaborative process involving, as I said at the outset, extensive consultations with various stake-

holders, and we're grateful to all those who participated in the process. The model set out in schedule C of the bill is in fact a framework for regulation rather than a detailed prescription. Much detail remains to be worked out, and that's a wise approach in our view, for several reasons.

First of all, because it's an innovative approach, it's important that it be flexible. Generally speaking, the regulation of paralegals in a form such as this is a first in Canada. The committee that will be charged with the responsibility of devising the detail of such questions as training requirements, areas of practice and the like will consist of five paralegals, in the first instance appointed by the government, by the Attorney General, including one who will be the chair of the standing committee, so that the committee will be chaired by a qualified paralegal in the first instance selected by the Attorney General but in due course elected by the paralegal's peers.

1030

It will consist also, in addition to those five paralegals, of five elected benchers of the law society who are, generally speaking, senior members of the legal profession who are well-regarded by their peers, who are elected in quadrennial elections to the law society's governing body, as well as three laypersons, who are neither paralegals nor elected benchers—in other words, neither paralegals nor lawyers.

So we have the balance there. We have the benefit of the expertise of those involved in the regulation of the legal profession. We also have the expertise of those who are actual practising paralegals, who can be assumed to be sensitive to the types of problems that paralegals encounter in their daily practices.

Mr. Kormos: On a point of order, Mr. Chair: Could you please rule on the use of BlackBerries so we at least can give the impression of giving these people our full attention?

My apologies.

Mr. MacKenzie: Not at all, Mr. Kormos. Thank you.

The Chair: Thank you, Mr. Kormos. I'd ask members and everyone else to please refrain from using BlackBerries or any other devices while the presentation is taking place. Thank you.

You may continue.

Mr. MacKenzie: Thank you, Mr. Chairman.

The point I was making, essentially, is that this standing committee, which will have a great deal of work to do if and when Bill 14 becomes law, is well positioned, because of the expertise of its members and the public input that it will have, to devise a scheme that will deal with such issues; for example, what paralegals may call themselves, how they may advertise their services, what rules of professional conduct will govern them, what insurance requirements will be in place, what admission requirements there will be and the like. We regard it as highly desirable that that committee have the flexibility to develop proposals on those issues.

Let me elaborate on just one of those, and that's the question of what paralegals may call themselves in ad-

vertising their services under Bill 14. I do that because I gather there's a proposal from at least one lawyers' organization, the Ontario Bar Association, to the effect that the word "paralegal" should appear in the bill and that there should be a strict demarcation between paralegals and lawyers. Part of the concern about that is that the term "paralegal" is very vague. Indeed, the fact that the public doesn't really understand what a paralegal is is part of the problem we've had while paralegals have been unregulated. It's a term that's sometimes used notably in the United States to describe employed law clerks, or what we would ordinarily call law clerks, employed by lawyers to do work under the supervision of a lawyer. It's used to describe people who hold themselves out to do what we would think of in the law society as solicitor's work, which we regard as the unauthorized practice of law, generally speaking now. It's used to include traffic court agents, small claims court agents and agents before different tribunals. What we would see as part of the work of the task force, and part of the work of convocation as the governing body of the law society, would be a licensing process that might permit, for example, a former police officer who appears in traffic court to call himself or herself a traffic court agent. We would think that that would be a much more accurate description than "paralegal" for the work of that person. Similarly, it could be that the paralegal task force, the provision of legal services group that I described, might say that somebody could hold themselves out as having sufficient expertise and training to appear before the Workers' Compensation Board. The best descriptor of that person might be "Workers' Compensation Board agent." We'd be very concerned that if the word "paralegal" found its way into the legislation and any of those persons were allowed to call themselves paralegals, that might leave the misleading impression among members of the public that their areas of practice, their qualifications, are broader than they really are. It's for that reason that our respectful submission to this committee is that Bill 14 has it right in its present form, that it's undesirable to use the term "paralegal" in the legislation.

Having said that, I do want to point out that the Ontario Bar Association and most of the other organizations of which we are aware, whom we have dealt with on our task force at the law society, agree on first of all the need for regulation of paralegals. I don't think that these days there's any real dispute about that, and we do regard it as important that this bill receive attention as a matter of urgency in the interest of protecting members of the public. I think there's general agreement too, certainly on the part of the Ontario Bar Association, other groups that we're aware of, that the law society, for the reasons I've outlined, is the appropriate body to regulate paralegals in light of the experience that it has doing that.

There was an article recently that you may have seen in the Toronto Star that described the law society as finding itself in the middle of the debate, between some paralegals on the one side who would like to be un-

regulated or who seem to fear the consequences of regulation by the law society, and groups such as the OBA on the other side of the debate who represent the legal profession and who take a somewhat different view from that of the law society. It may well be that we are in the middle in that sense. I'm sure there are some lawyers around the province who would prefer to be unregulated too, but that surely isn't something that should motivate the Legislature to decide that paralegals shouldn't be regulated in the way proposed.

Our goal as the regulator of paralegals, should we be given that opportunity by Bill 14, will be the same as our goal as the regulator of lawyers these last 209 years, and that's to promote high standards of competence and ethics in the public interest.

So thank you again for the opportunity to address you on Bill 14. I will be happy to attempt to answer any questions that members of the committee may have that you think I may be of assistance to you on.

The Chair: Thank you very much. We have a little bit over a minute left for each side. So we'll start with the official opposition.

Mr. Runciman: I thank you for your presentation. I am curious with respect to a number of issues and I'm obviously not going to have time now, but I know you're aware that we've been contacted by a range of people—the Ontario Real Estate Association, the Intellectual Property Institute of Canada—a whole range of folks who are concerned about consequences in terms of, in this case, trademark agents. I'd like to hear you. I'm not quite sure how you would deal with all of these organizations and individuals who are engaged in activities that they believe would fall under this legislation and create significant challenges for them.

Mr. MacKenzie: I think, again, it's very important that there be a definition, in our view, of the provision of legal services. If there's a specific part of that provision that raises a legitimate issue as far as some particular provider of legal services is concerned, it will be up to the standing committee on legal services to think through the implications of that and decide whether this is a group that, in the public interest, really should be regulated or whether there is a good reason to exclude them from the ambit of the scheme for the regulation of paralegals.

Mr. Runciman: You don't see that as a role for this committee and for the assembly?

Mr. MacKenzie: I certainly wouldn't discourage you from getting into that, but I think it's important at the same time that the committee recognize the desirability of having the benefit of the expertise of the five paralegals who will be on the committee as well as of the five elected benchers and the lay people who are charged with the responsibility of working this through in detail.

The Chair: Thank you very much. Mr. Kormos?

Mr. Kormos: The Chair, not inappropriately, introduced you as speaking on behalf of the law society of Ontario. Since we're secularizing the profession with things like licensing, maybe an amendment to change the

Law Society of Upper Canada to the "Law Society of Ontario" would be welcome by you.

Mr. MacKenzie: Actually, it wouldn't.

Mr. Kormos: There we go.

Mr. MacKenzie: It's been a matter of some debate, as you know, Mr. Kormos.

Mr. Kormos: And far less colonial in its perspective.

Look, one of the concerns out there is with respect to subsection 2(10) of the bill, which will become amendments to section 1 of the existing Law Society Act, and we're talking about the definition of "legal services." A broad range of communities has expressed concern about that. Mr. Runciman referred to it. One of them is the community of dispute resolution practitioners, especially mediators, preparing minutes of settlement in the course of a mediation. How are we going to assure those people that they're not going get caught up in a very broad definition of "legal services?"

1040

Mr. MacKenzie: I think the preliminary question you have to decide is whether it's desirable that they not be caught up in that definition. If they are providing legal services, if you have a mediator who's not a lawyer regulated by the law society and not regulated by any other body, who's serving as a mediator preparing documents, such as minutes of settlement in a dispute resolution process to which two lay people are privy, perhaps the answer to the question is, they should be regulated, they should be trained and their credentials should be recognized by a body such as the law society, so that the public is adequately protected.

Mr. Kormos: That's going to generate some reaction this afternoon.

Mr. Berardinetti: Mr. Chairman, I just want to raise a point of order very briefly. I've just been watching the time, and I wanted to mention this to Mr. Kormos and Mr. Runciman: I think we're supposed to go until 11:50, so I'm just wondering, timewise, if they have extra time for speaking. I do apologize for interrupting. I thought we were going to 11:50. My watch, not my BlackBerry, says that it's 10:40.

The Chair: Thank you, Mr. Berardinetti. That was an error on my part and I do apologize. The law society had 30 minutes and I had marked it down for 20, so that's an extra three minutes for each side. You have about four-and-a-half minutes, and you may begin now. Then we'll go back to Mr. Runciman and Mr. Kormos for about three minutes each. Again, my apologies for that.

Mr. Berardinetti: I just wanted to perhaps—

The Chair: Yes. We'll start with you. You have four-and-a-half minutes; then we'll go back to Mr. Runciman—

Mr. Berardinetti: I'll defer to the parliamentary assistant, who knows the bill better than I do.

The Chair: Mr. Zimmer, you may begin.

Mr. Zimmer: I take it the gist of the law society submission is that it shares this government's view that this is, at least with respect to the paralegal fees and indeed the rest of the bill, essentially an exercise in con-

sumer protection, while at the same time being respectful of the needs and the working conditions of both lawyers and paralegals. But the consumer protection issue is really the trump card here. Is that—

Mr. MacKenzie: Yes, that's correct.

Mr. Zimmer: I've just got a couple of questions: How do you envisage the law society governing and managing paralegals who don't want to be managed, who are in effect ungovernable? There's an expression with respect to lawyers about "ungovernable lawyers." How will you handle that issue with respect to paralegals?

Mr. MacKenzie: I think you have to break that down into two categories. First of all, paralegals who are not licensees, people who refuse to either obtain the credentials or to be governed, under Bill 14 can be prosecuted for the unauthorized practice of law or for doing things that are permitted to be done only by licensees under the act. The act also gives us the authority to obtain civil injunctions through the courts to prevent them from doing things that only lawyers or paralegals licensed under the legislation are permitted to do.

We also have to consider that from the point of view of paralegals who are licensed, but whose licences permit them to do only certain specified activities. For example, if you had a paralegal whose licence permitted her to only appear before the Workers' Compensation Board, because that's what her training and qualifications permit her to do competently and ethically, and that person were to prepare wills or do other work that is not permitted by her licence, then that person also can be disciplined through the law society's disciplinary process or can be subject to the other remedies under the statute.

The Chair: That's all the time we have for the government side. We'll go back to Mr. Runciman. You have about three minutes.

Mr. Runciman: I'd like to pursue a little bit the questions on the issue that both Mr. Kormos and I were raising. I was intrigued by your response with respect to the fact that there would be five paralegals so they can make a reasoned decision with respect to these individuals who may represent other professions which are not normally looked upon as paralegals. I guess I'm intrigued by that. I don't think that would give much comfort to the Canadian Institute of Mortgage Brokers and Lenders, for example, or, as I mentioned earlier, the Intellectual Property Institute.

If I hear you correctly, Mr. MacKenzie, I think you said that groups, organizations or individuals who are not regulated—it seems to be a consistent message. In some of the materials, we've received an amendment that would exclude any regulated profession from the scope of the legislation, which would seem to address the concerns. I'd like to hear your views on that.

Mr. Malcolm Heins: As you pointed out earlier, we're aware of the many letters that have been sent in, and have indeed replied to many of them that were addressed to us as well. What we've said, in essence, is really twofold. First of all, we need a wide definition of legal services in order to regulate, so that we are able to

capture all of those individuals who may decide not to try to come in within the act. Otherwise it's very difficult to actually prosecute them.

The second component of the structure of the act, and an important one, is the ability to exempt its application to other regulated professions, for instance. At the moment, the act is conceived with that authority being with the law society, pursuant to its bylaw-making authority. As you point out, some groups have expressed some reservations about that. What we would say in reply to that is that given our public interest mandate as a regulator of legal services, we see ourselves as competent to make those exemptions. Indeed, if you look at the report, which I think is part of your material, that we prepared on these issues there's a long list of people and professions that we would be exempting.

If it was felt in the public interest that it would be better to perhaps put some more transparency into that or some more public interest injection, we could see that being done by regulation as well, which would give government oversight to the process.

Mr. Kormos: Once again, thank you. I found it interesting that in the beginning of your opening remarks you illustrated the need for this legislation with the example of a paralegal in a personal injury situation where the award was about \$47,000 and the paralegal took half of it. You should know that the types of complaints that come into my constituency office are about that type of billing as it applies to lawyers as well as paralegals. Understand that. I'm telling you, it doesn't just take place with rogue paralegals.

Mr. MacKenzie: But doesn't that make my point? If a lawyer takes advantage of a vulnerable client in that way, that lawyer can be disciplined for doing that. The problem now with the case that I was citing was that a paralegal apparently took advantage of a vulnerable person who didn't speak English well, settled the case for far, far less than it was worth and took half of the proceeds; and because that paralegal was totally unregulated, there was nothing that the victim could do other than get a lawyer who, through the grace of God in that case, was able to reopen the case.

Mr. Kormos: But I tell you again, sir, that my experience in my constituency office in small-town Ontario—maybe things are different here in Toronto—is that complaints to the law society about billings and what are perceived as excessive billings by lay people are amongst those complaints that are least likely to be resolved in favour of the complainant.

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Mr. MacKenzie: But the complaint in that case wasn't just about the billing. There's a mechanism for any member of the public who complains about a lawyer's bill outside of the law society's process for that member of the public to have that bill reviewed, as you know, by an assessment officer who can review it and reduce it. The problem there wasn't that a person was over-billed; it may have been part of the problem, but the underlying problem was that an unregulated, untrained,

avaricious paralegal took advantage of a vulnerable member of the public and that avaricious and perhaps incompetent paralegal could do so with impunity.

Mr. Kormos: I understand. Let's understand that avaricious regulated practitioners are going to continue to do that.

What do you have in mind for grandparenting? There is a whole wealth of number of people, especially paralegals, out there with proven skills, demonstrated skills, people doing advocacy at any number of levels of tribunals and courts. What do you have in mind in terms of grandparenting?

Mr. MacKenzie: We fully expect that there will be grandparenting.

Mr. Kormos: How?

Mr. MacKenzie: I can't tell you in detail the answer to that now, but we do expect that everybody who wishes to be grandparented, who wishes to become a licensee under the Law Society Act without going back and taking a two-year college course and going through whatever other requirements that person must fulfill, will have an opportunity to come to the committee and come to convocation to say, "I've been practising as a traffic court agent for the last 15 years. My clients are very happy with the service I provide," and I fully expect that that person will be permitted to practise.

The Chair: Thank you, gentlemen, for your presentation.

Mr. MacKenzie: I'm grateful to you, again, for the opportunity to speak to you. Thank you.

BEN TRISTER

The Chair: The next presentation is from Mr. Ben Trister. He's the past chair of the Canadian Society of Immigration Consultants.

Mr. Ben Trister: Good day.

The Chair: Good morning, Mr. Trister. You have 20 minutes to make your presentation. You may begin.

Mr. Trister. Thank you. Firstly, I appreciate very much the opportunity to speak to you today. I am before you as the past chair of the Canadian Society of Immigration Consultants. If I could briefly give you a little bit of my background, I'm a lawyer, just so you know. I head the immigration practice group at a firm called Borden Ladner Gervais and, for a time, I was the national chairperson of the Canadian Bar Association's immigration section. During that time, I was asked by the then federal Minister of Immigration, Denis Coderre, to chair an advisory group on how to best regulate immigration consultants.

We made a report that essentially called for the creation of a corporation that would be designated by the federal government to regulate immigration professionals who practised Canadian immigration law. The idea was that the body would be set up so that for the first two years the board would be dominated by non-immigration consultants and that after two years, which actually corresponds with this month, there would be a handover

of authority and the consultants would elect a majority of people to the board so that it would be a self-regulated profession.

The reason I decided to request to impose on your time is because I think the experience has been an important example of what you can expect if Bill 14 doesn't go through. If we don't get a consistent overriding regulator of legal services in Ontario, one alternative is to have many regulators. Some of the professions may be ready to regulate themselves. Others, like immigration consultants, are not.

This doesn't give me pleasure to say because, of course, I was the person who was most in charge of regulating that profession, and for me to come to you and say I think it's been a failure and should be replaced by a different model perhaps doesn't speak well of my abilities as chair of the advisory committee or of the society. But I met with significant problems in dealing with the consulting community and their so-called leadership. The result of that, and I will give you specific examples, is that what has transpired has not been in the consumer's interest, nor has it been in the interests of the consultants who are regulated.

What happened in the consultants' case is that people were appointed to the board who didn't have experience establishing a regulatory body. The result of that is that when you give people an organization that has a \$3-million-plus budget and you have people running the show who aren't qualified to do it, then chaos can ensue. That, for example, would be why, to the best of my knowledge, as of today, over two years after the organization was set up, I don't believe there has been a single discipline hearing in the existence of the organization. I may be out of touch by about one or two months, but for the time that I was there, there were no discipline hearings at all.

In addition, we had board members who were getting paid exorbitant amounts of money. I resigned over the issue of the vice-chair, who is now the chair of the organization, who was an immigration consultant, who collected compensation from the society in the six figures for a part-time job that was not at the time authorized by the board. He and the treasurer, who's also a consultant and a good friend of the then vice-chair, went to the staff member who is in charge of accounting and said, "Pay him at this rate," and the board didn't know.

When this came out—this was in the media—one would have expected that there would have been a hue and cry on the part of the consulting community and something would have been done. But nothing was done, because the consulting community was scared that if they actually called attention to the problems that existed at the organization—which not only included excessive compensation of board members, but we couldn't keep professional management. We had two CEOs resign. We had other board members resign in protest over how business was being conducted. We had an audit that was done, the results of which were never reported to the membership. The costs of membership are way over what

the costs would be if they were members of a body such as the law society, because if everybody is regulated under one umbrella, there are economies of scale. To be a CSIC member, when I left, you had to pay \$2,600 a year for the privilege.

The professional testing of members is suspect. It has not been conducted in the manner in which the board was advised it would be conducted.

All these problems exist, and yet the consulting community is scared to say anything about what's going on at the board because they don't want the whole exercise to be brought into disrepute. So you have an organization where the people in it at the directors' level are benefiting from it. The members aren't benefiting; it's costing them a lot of money. The consumers aren't benefiting, because there are no meaningful standards of discipline and hearing mechanisms that are applied.

It basically has been a waste of money. It's been a noble endeavour but, at the end of the day, it hasn't produced what we hoped it would have produced. That has a lot to do with the relative immaturity of the regulated members to step up to the responsibilities of self-regulation. So while it's nice in principle, in practice there is so much self-interest going on that if you don't begin the process at least with a long period of time in which independent people are regulating the profession and giving them the skills and support necessary to progress to self-regulation, you're going to end up in a situation like CSIC, which has been very unfortunate.

Over time, that organization may make progress, but I can tell you that when I was there, they had 1,600 members and they were charging \$2,600 per in order to meet the costs—there are fixed costs that you have to have. I'm told that there are now slightly over 500 members because so many people who are in the profession have resigned from membership because they weren't satisfied with the organization, didn't think it benefited them, and many of them are now practising without even being members of CSIC. They just continue on in their businesses. A lot of people haven't passed because they weren't competent to practise in the first place, even with the relatively easy standards that CSIC has put in place for continued membership in the profession.

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When I was chair in the beginning of the organization, I sat with Mr. Heins of the law society and told him, "If you folks regulate paralegals in Ontario and you include immigration consultants, then you're going to kill the entire federal regulation project, because the majority of CSIC members are from Ontario. If you take their membership out of CSIC, CSIC would die, because it wouldn't have enough support or funding." In this case, if Ontario acts, it jeopardizes the ability of practitioners in other provinces to continue to practise, because they may not be able to sustain a federal regulator by themselves. I used to think that was a bad thing, but now I think it's a good thing, because you can't assume that individual professions in individual areas of law will be able to provide the same level of consistency as one overall regulator.

Mr. MacKenzie talked about the law society being in the middle. I was in the middle because I was a lawyer who was heading up the validation process for the existence of the immigration consulting profession over the objection of many of my colleagues who think that consultants shouldn't practise at all, but if they do, then they should be regulated. So I said, "Consultants aren't going away. We should regulate them." Unfortunately, I don't see a legitimate way of regulating this profession other than what is proposed in Bill 14. I've lived through the process, and that's why I came today: just to tell you that I think Bill 14 would be a significant advance. It has been a long time in coming and would be helpful to consumers of immigration services.

That having been said, I asked Mr. Heins if it was contemplated in the schedule that he referred to that immigration consultants would be exempted, and he said yes, so I think that speaks to the point about who should determine what those exemptions are. I have a sympathy for the Intellectual Property Institute of Canada's argument that they've been around for 50 years in terms of being a regulated profession. Nobody, to my knowledge, challenges the quality of the representation that they provide or the accountability that they're subject to. I don't know that it would benefit consumers in—I think that organization has the strongest case, in my view, for an exemption from the law. But you're going to get into—somebody is going to get into the murky decision-making of what area of law should be dealt with by what group, and that's going to be a very unpleasant position to be in, and every one of them is going to be a fight with people on different sides. Whatever committee is going to deal with the immigration consultants exemption at the end of the day, I'm going to be there to say, "Stop," and CSIC's going to be there to say, "Go." You can multiply that by however many areas of law in which paralegals are regulated. I don't know how you'd want to resolve that. Do you want the political accountability, or do you want the benefit of leaving it to independent people who are skilled? I don't know the answer to that. I will leave that to you. That's what you're elected for.

I think those are pretty much the points I wanted to make. I'm happy to answer questions if there are any.

The Chair: Thank you very much. There are about three minutes for each side. We'll begin with Mr. Kormos.

Mr. Kormos: So if CSIC, the Canadian Society of Immigration Consultants, were to die, you'd consider that a mercy killing?

Mr. Trister: Yes.

Mr. Kormos: But you've also been told that the law society contemplates exempting CSIC members or immigration consultants from their supervision?

Mr. Trister: I think it would be CSIC members, but I'm not sure. I haven't seen it. I don't know the answer to that specifically.

Mr. Kormos: That's interesting, and the reason I asked is because it seems that if I want to join CSIC and pay their fees, to whatever end, and relieve myself of any

supervision by the law society—Mr. Zimmer, that doesn't seem to be very logical, does it? It's like joining the Bandidos to avoid having to acquire a 1%er Hells Angels patch.

Mr. Trister: That's a colourful analogy.

Mr. Kormos: Mr. Zimmer?

You've read the act, especially as it applies to so-called paralegals, and you see the definition of "legal services" as broad as could possibly be. Should we be concerned about the fact that this is a wide, huge net that could capture everything floating out there with no political oversight, but rather the oversight of the law society?

Mr. Trister: There are advantages to statutory self-regulation and the independence of the regulator. After all, lawyers deal with the government on the other side all the time. It's not always great to have the government directly involved, but I do think there could be a legitimate role for the government to have oversight over who's in and who's out.

If I could just make one very quick point: One of the key problems with CSIC is that it's not a statutory self-regulated body; it's just a corporation. That means that the only benefit you get from being a CSIC member is that the government will talk to you if you're a CSIC member or if you're a lawyer, but there's nothing illegal about calling yourself an immigration consultant, practising as an immigration consultant and marketing yourself as such, and not being a CSIC member. You're free to do that. It's just that the government won't talk to you; they'll talk to your client directly. That's a very weak model for regulation.

Mr. Kormos: I'm going to wrap up, but I've got to tell you that the biggest single number of complaints I get in my constituency office is with respect to lawyers, not paralegals—that doesn't mean I don't support the prospect of regulating paralegals—and the second-biggest complaint comes from clients of immigration consultants.

Mr. Trister: I don't doubt that.

Mr. Kormos: When you look at some of the stuff that's been prepared for these people, who pay huge chunks of money, oftentimes ethnically exploited by somebody they identify with because of a linguistic bond or an ethnic bond—some pretty miserable stuff being done out there.

The Chair: Thank you, Mr. Kormos. Mr. Zimmer?

Mr. Zimmer: I'm pleased to see that your principal concern—you see the benefit in this legislation—is the protection of the consumer. While we want to be respectful of lawyers and paralegals and people working in the immigration field, the trump card is protection of the consumer.

I do share your concerns, and I understand your submission. I was the assistant deputy chairman of the Immigration and Refugee Board of Canada when they were going through the process of setting this up. I like to remind myself from time to time that I flagged all the concerns you just expressed now. I think you and I had a number of conversations at the time this was working its

way through. So I'll just leave it at that. I understand your submission.

Mr. Runciman: Mr. Trister, thanks for being here. Perhaps I wasn't listening closely enough, but when you began your presentation you were talking about the need for independent people at the outset; I think that is essentially what you said. Is that a criticism of what is transpiring here, or do you look at the way this—I know you said you'd toss back, in terms of the political accountability, a decision we have to make. Was that a veiled criticism with respect to the way this is being structured? I'm just looking for your input in respect to your comments—a little elaboration.

Mr. Trister: I'm not sure of the comment to which you're referring.

Mr. Runciman: In terms of establishing this and making decisions, you talked about independent people at the outset as critically important.

Mr. Trister: You mean who makes the decisions about who falls within this scheme and who doesn't?

Mr. Runciman: That's right.

Mr. Trister: I think it's very challenging. I suppose I would favour a kind of mix, really. I think there will be so many mundane issues that this committee would not want to occupy its time with, but I think there should be a process that would allow the committee to be involved when bigger, more contentious issues arise that have greater implications.

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On immigration consultants, there will be some contention as to whether they're in or out. The law society may have put them on the list because it's such a yucky area. They don't want to get tainted by the people who—that could be one reason; there could be self-interest in the law society as to whom it takes on and whom it doesn't that may not purely reflect the consumer's interest.

Forgive me for saying such a thing; I love you.

Laughter.

Mr. Runciman: You referenced the intellectual property institute, and I made a comment earlier with respect to their recommendation about exempting any regulated profession; essentially, a sort of blanket exemption that we could incorporate in the legislation as an amendment. Do you think that would address many of the concerns we're hearing?

Mr. Trister: Personally, I think the committee ought to reserve the right to stay involved when it wishes to and leave the rest to the good folks at the law society.

The Chair: Thank you for taking the time to appear before us.

Mr. Trister: My pleasure.

ONTARIO TRIAL LAWYERS ASSOCIATION

The Chair: The next presentation is from the Ontario Trial Lawyers Association.

Mr. Russ Howe: Good morning. As I sit here, I'm now scratching my head after those comments. I'm trying to figure out if I get—

The Chair: If I could just interrupt, can I get you to state your name for the record?

Mr. Howe: Sure. Russ Howe.

The Chair: Thank you very much. You have 20 minutes—actually, I made a mistake again. You have half an hour.

Mr. Howe: I planned for 20 minutes. You'll be happy.

The Chair: Any time you don't use will be divided up to ask any questions. You may start.

Mr. Howe: Thanks. I just have to try to figure out now if I get to put a Bandidos patch or a 1%er patch on my robe when I go to court, since I'm a law society member.

Mr. Kormos: You tell me which one is more applicable.

Mr. Howe: I don't know. I guess I'll have to ask the law society.

I should start by telling you in about 30 seconds who we are. The Ontario Trial Lawyers Association is a non-profit organization of 1,100 lawyers across the province. We represent accident victims in personal injury cases. The perspective I'm going to bring to this issue under Bill 14—two issues, actually—is that of the injured accident victim. I don't know anything about immigration; I don't know anything about divorce. I'm here to talk about people who are injured in various types of collisions or through medical negligence or those sorts of things.

First, I want to talk about the schedule C paralegal regulation. I have to start by saying we are eminently pleased that the government is finally stepping in to regulate this. We think it's a big step forward and long overdue. If this legislation is done right, this is an opportunity for the Ontario government to give injured accident victims the protection they need as consumers of legal products. I have to praise you for moving forward on this. We're really pleased about it.

We at OTLA have two things we don't like about the paralegal regulation scheme; actually we have three, but I'm only going to talk to you about two and leave the boring one for the written submission that is coming.

The first is a problem with titles. They're confusing and we think the consumer may be confused by some of the titles that are going to be used. The scheme, as I understand it, is set up to make anybody who provides legal services or practises law a licensee of the law society. To be frank, I know it's not that important to you guys, but we're not very fond of the term "licensee." It makes us feel like hotdog vendors. I think it does a disservice to the service that barristers and solicitors have provided in this province for hundreds of years and we should go on from there.

I understand that licensees are going to be divided into two classes. We don't like being called licensees, by the way; we kind of like "barristers and solicitors," "lawyers" and those sorts of things. Licensees are going to be divided for the public, as I understand it, into two classes: those who are licensed to practise law and those who are licensed to provide legal services.

For people who sit around and stare at documents all the time and tear words apart, there may be significant differences in those two phrases, but it is hard for the public to distinguish between "practise law" and "provide legal services." We think simpler, better language can be used to specify the difference. As I understand it now, "practise law" is going to refer to lawyers. We should say that they are not people licensed to practise law; they are barristers and solicitors. You might want to call them members of the law society; you might want to call them lawyers. On the other hand, "provide legal services," I understand, is the term we're going to try and use to catch paralegals and separate them out from lawyers. A more clear term is needed so the public can understand that it's a paralegal or a paralegal agent. I can imagine a paralegal with a sign saying, "I'm a licensee of the Law Society of Upper Canada, licensed to provide legal services." It's going to be very hard for your average consumer—or perhaps the person we should really worry about, the language-limited consumer—to distinguish between someone licensed by the Upper Canada law society to provide legal services and someone who's licensed to practise law. We really need to make the language clearer so that we tell the public exactly what we're doing and who is what. That's one step I'd like to take.

The second question on paralegals, and I'll move through it fairly quickly, is that there's no definition, as it stands now in the drafts I've been given, of the practice of law. It seems that perhaps the intent is to pass the definition of the practice of law, as opposed to providing legal services, off to the law society or others to deal with in a regulatory fashion. We feel that many other provinces have been able to provide definitions of the practice of law, and this is fundamental to the scheme. This is something that we think is so fundamental to the legislation that it shouldn't be downloaded. The practice of law should be defined in the legislation. It's not regulatory; it's not one of the tertiary matters that should be handed down. It could be changed far too quickly, as we know, in my experience, how quickly regulations can be changed as opposed to legislation. The practice of law is too important to put in regulation, which effectively means that when the government of the day doesn't like the definition, they can change it without significant debate or going through the bill process. We don't think that's right. We think it's far too fundamental to leave it to be so easy to change.

The second issue I want to talk to you a little bit about is the proposal to amend the Courts of Justice Act—this may not be a sexy subject for most of you—to add a new section, section 116.1, which will effectively force victims of medical negligence to structure the future care costs portion of their settlement. If I represent a young child or an adult who gets an award that is rather large, with respect to future care costs, it forces them effectively, for those of you who don't understand the structuring aspect of this, to buy an annuity with that money, as opposed to doing what they want with it.

There are a lot of difficulties in the medical malpractice field, and I've got to give you just a little bit of background to help you understand why this is not the right way to attack this issue.

There have been two major commissions in the province and in Canada done on medical malpractice and the problems: The Dubin commission and the Pritchard commission. Interestingly, neither of those studies came to the conclusion that future care costs should be mandatorily structured, which is what this section of the act calls for. It gives you perhaps an escape loophole, but the mandatory structure is still in place. The problem is, there is a cost problem in the medical malpractice field. My belief is that's why the Canadian Medical Protective Association, the CMPA, which this government funds, of course—you're probably aware that you pay between 65% and 90% of doctors' premiums to the CMPA, so it's effectively a publicly funded organization. They have alleged, or tried to make movement, that it's too expensive to do medical malpractice cases. On that case, they're dead right: It is too expensive to do medical malpractice cases. But if you look at the facts, it doesn't have anything to do with future care costs. So what I'm going to say to you at the end of my submission is that there is fat to be trimmed, but don't trim it from the victims; trim it from the rich guys. You're trimming it from the wrong place.

In the real world of medical malpractice, the facts are these: For the last 10 years, the number of claims has been going steadily downwards. Less doctors than ever, less hospitals than ever in this country are being sued—a steady downward trend for 10 years. Judgments—that is, the amounts awarded against doctors and hospitals—have either been steady or going down for the last three years. So if there's fat in the system, it's not because there are too many claims and it's not because the judgments are too big.

In fact, the Pritchard commission and the Dubin commission both came to the same conclusion: The fat in the system is the way these cases are being defended by the CMPA. The numbers are stunning: About 50% of the money that goes into the CMPA is going to defending the cases. So half the money that is set aside or used to help young children who are injured by a doctor's negligence, or to help a woman who has a breast removed unnecessarily, or to help a gentleman who has the wrong surgery done on the wrong leg and will never walk properly again, is going to the legal defence of these cases.

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That is obscene. There is no insurance company that operates on a model anywhere near 50% of defence costs, and it is simply an opportunity for a group of individuals who feel that they can milk the public trough to make money. It's screwing up the system for the victims.

The studies found two other interesting things: (1) the inflation in the system, the only inflation in the system, is defence costs, going up at about 11% a year, which kills the rate of inflation; and (2) something in the neighbourhood of 10% of victims of medical negligence will

ever receive a nickel of compensation. So the trickle-down is massive. Only 10% of the victims of this problem are going to receive any compensation from this money the government is putting in. It's a horrible situation as we speak.

So the solution that's being proposed, or the adjustment that's being proposed—and it's supposed to save \$12 million—is to take away the options of the injured person on what they have to do with their money, and I want to talk to you just a little bit about structured settlements and why there are some disadvantages to this. If you do want to cut fat in this bill, look elsewhere than the victim.

A structured settlement can't be changed once it's set up. It's a stream of income. If a court decides an individual needs \$2,000 a month in care costs, the new scheme means they're going to get \$2,000 a month till the time they pass away, completely inflexibly. There is no way to adjust it. There's no way to take it in or take it out. This is governed by the Revenue Canada tax act, and once it's in, it's in. So there's no way to adjust it, and it creates a number of problems for us.

First, it creates greater complexity in the litigation, and it's going to create more litigation expense. To be frank with you, lawyers are going to make more money on it. We're going to go in and argue about what kind of structure should be used, how long the structure should be for, what kinds of rates of mortality should be used. You're just creating a whole bunch of legal issues that don't exist today, and you've already got a system that's sucking way too much money out of it into legal fees that aren't getting to accident victims or medical negligence victims. So, one, you're going to make it legally more complicated.

Secondly, you're tossing out about 200 years of common law, with no evidence to say it's reasonable. The Supreme Court of Canada has made it clear in the *Andrews v. Grand and Toy* case that victims should be able to do what they want with the money that's awarded to them. I'm a moderate fan of a fair-sized government, but this is a Big Brother move. You're going to step in and tell these people what they can do with their money and throw out the common law without proper evidence that this is going to save you any money. In fact, when the top structure broker in Ontario, Frank McKellar, was asked this by the CMPA, he told them that there is no way he can calculate the amount of savings that are going to occur. So this bill is going to take away the historical rights of victims without any proper evidence as to how much money that's going to save. If you could just say to me that this is going to save \$100 million, or a real figure with proper evidence, it might be debatable, but you can't steal people's rights when you don't know the benefit of stealing.

Going beyond that, there has been an argument advanced, I understand, in some quarters that structured settlements take away the mortality issue, that if you guess that a person, when you give them a lump sum, will die at a certain age and you guess wrong, the struc-

tured settlement, since it goes on monthly as long as they live, deals with that issue. That's a red herring and in fact that's false. When you buy a structure, you have to assume a mortality rate. They don't give you a structure for free. You've got to put a certain amount of money in. One of the key features in determining how much money has to go into that structure is the mortality rate of the individual who's going to receive the money, when they're going to die. So the argument that this does away with mortality issues at trial is simply dead wrong. We're still going to hire mortality experts and we're still going to be fighting about how long these severely handicapped children or injured people are going to live. So don't buy the argument that there's a cost saving coming into this.

Lastly—there are a couple of more issues on it—future care costs are based on estimates, and if the projections are wrong, you give the victim no flexibility. Let me give you an example. Let's say there's an individual who receives an injury, and they determine that his care cost should be \$2,000 a month because of something with his leg that severely inhibits his lifestyle. If five or 10 years after the accident a new medical technology or a new treatment becomes available at a cost of \$50,000, he'll never be able to accumulate the capital to afford it. So he will have to live with that for the rest of his life and never have access to new and more expensive technologies. There's no flexibility because all he gets is \$2,000 a month. However, if he had been awarded that amount of money in a single lump sum and invested it properly, like most plaintiffs do, he would have that \$50,000 available to access that new technology to make his life better.

What you're doing by putting the money for future care costs into an annuity that the claimant has no control over is you're handcuffing them for the rest of their life as to what they can do and what treatments they will have. If I represent a 10-year-old today who suffers a serious injury and he lives to 65, you're effectively denying him the next 55 years of technology to make his life better; you're taking all that discretion away from him. It's a terrible thing to do.

The other reason the CMPA likes this, or some people like this, is that annuities are all held by insurance companies, and the insurance companies make profits off these annuities. So whatever millions of dollars in care costs will now be held by insurers, who make a profit off it. There are of course commissions on annuities and structures, so I guess the structure broker is going to make a commission. But that's not what this act is supposed to be about. We're supposed to be protecting the consumers and the injured in this province instead of putting handcuffs on them. For those of you who don't understand annuities, they are held by large corporations. There is some risk, although I will tell you it's not that large, that the annuity-holder can go bankrupt, and then of course the plaintiff is left with nothing; it's taken out of his hands.

To summarize on the medical care cost issue and on the structure broker issue, what you're doing with this

bill is, you've got an inflationary problem—I guess there's a reason you're addressing this—in the medical malpractice field. The real inflationary problem is in defence costs: highly paid lawyers with large firms charging significant amounts of money and defending some cases that really should never be defended. Somebody has decided somehow that the way to address this problem is by telling victims, "You can't do what you want with your money. We're going to lock it up and we're going to tell you what to do with it. We going to tell you what to do with it, today, for the rest of your life, and we'll never let you change it. We'll deny you access to an investment opportunity. If you choose to spend that money on a better technology to make yourself better, you're not going to be allowed to do that. If you do a little bit better down the road and you want to start a small business with some of your money to contribute to the community, we're not going to let you do that either. We're just going to give you a stream of payment, and Big Brother is going to tell you what to do with your money."

What you're doing in this case, unfortunately, is robbing the poor, the injured victims, to pay the rich, the lawyers. I think section 116.1, proposed for the Courts of Justice Act, is absolutely abhorrent. There's no value to it, and unfortunately there's no good evidence to justify this theft of rights.

Those are all my submissions. If you have any questions, I'm happy to answer them.

The Chair: Thank you very much. That leaves about five minutes for each side. We'll begin with the government side.

Mr. Zimmer: This idea that the structure, the provision for future care—that somehow five years down the road the medical technology is going to change, and because the structure didn't contemplate that, that technology's not going to be available: Is that technology not available through the public health care system?

Mr. Howe: Interestingly, the future care costs—some of them are and some of them aren't. Let me give you an example. I've represented quadriplegic individuals who are married, and they hope someday to have children. The technology has changed rapidly in the way that they can fertilize their wives from the position of being a quadriplegic or advanced wheelchairs. So if, instead of getting a certain amount of counselling every month for the fact that he'll never have children, a new technology evolves that the \$10,000 or \$20,000 would allow him to have children, he can't accumulate that capital; he has to sit on those \$2,000 a month. And nursing costs, all sorts of treatments, are not covered in Ontario. Only parts of wheelchairs are, only very small fractions of home renovations are here, and as you're probably aware, very serious services for some of the injured people, such as physiotherapy and various versions of chiropractic, have been delisted.

Mr. Zimmer: My second question is, you have made the point that an injured person, in terms of their future care, in your view would be better off with a lump sum,

and they can prudently invest and manage that money and provide for contingencies that may be five, 10 or 15 years down the road. I agree; I suppose a very sophisticated person, an investor who understands money management, could make that sort of provision. But what about those persons who don't have that level of sophistication or in fact don't have the current wherewithal where they can set aside monies and so forth and so on? So they're living a little closer to the wire and will use that money for current expenditure. Aren't they better off with an ironclad structured settlement that guarantees the provision of future health care services, even allowing for some of the exotic treatments like fertilization and so on that may not be covered?

1130

Mr. Howe: You're entirely correct about that. The obvious example is the individual who's not competent to handle their money—not just not prudent or a good spender; someone who's not competent. The courts now, as we sit here, have jurisdiction to order structures where they feel it's in the best interests of the plaintiff. What you're doing is you're turning the shotgun around. You're saying, "You're not entitled to your money anymore unless you prove to us that you're really, really good." Right now, the courts have a jurisdiction to say, "If you're incompetent or you can't handle this money, we're going to order a structure." You see it in cases where there are children or unsophisticated individuals or the brain-injured. You're turning the onus around. You're making the individual prove they are competent to get their money. You're assuming that everybody is a child and incompetent, rather than assuming they are competent. You're taking away—you're putting handcuffs on the judges as well. You're making it mandatory to do the structure. Judges, to be frank with you—I know they don't get to come to testify—they hate mandatory. They like to have some discretion, because when they spend two or three weeks or four weeks or a month at a trial and get to know somebody and their history, they feel they can make a good decision.

Mr. Zimmer: Am I incorrect that, in the settlement of a serious motor vehicle injury, there could be the payment of a lump sum up front to cover pain and suffering, if you will, together with a structure to guarantee future health care?

Mr. Howe: Absolutely. There are—

Mr. Zimmer: That being the case, then, the person's got the best of both worlds. They've got a lump of money up front for the pain and suffering aspect of it, and they've got a structure in place to guarantee future health care.

Mr. Howe: As long as the structure and the pain and suffering money are adequate. Of course, you've got a deductible on the pain and suffering money and a limit on the pain and suffering money.

Mr. Zimmer: Yes, but isn't that the function of the lawyer to make sure that that upfront pain and suffering payment is adequate?

Mr. Howe: The lawyer is limited by the law. The maximum pain and suffering money you can achieve in

Canada is \$300,000, and in this province you have to give \$30,000 of it back to the insurance company under the Insurance Act. You've got a \$30,000 pain and suffering deductible.

Mr. Zimmer: Thank you very much.

The Chair: Mr. Runciman?

Mr. Runciman: Mr. Howe, I want to thank you for your submission. I found it very interesting and informative. I wasn't aware of these concerns. You obviously have been involved with these kinds of actions. Is this something where your organization, broadly speaking, would be very much involved in these kinds of actions?

Mr. Howe: Absolutely. This is all we do.

Mr. Runciman: Were you consulted by the government with respect to these changes? We heard about this exercise of broad consultation.

Mr. Howe: Absolutely; we were consulted and we expressed our concerns all the way along. I'll criticize this government for a lot of things but not for consulting us on this issue. They were fair to us on that.

Mr. Runciman: I wondered when you described yourself as a moderate fan of fair-sized government. In any event, I really appreciate your submission.

What happens in these cases with the victims? Who funds them with respect to their legal costs associated with these cases?

Mr. Howe: Medical malpractice cases, which this act applies to, are almost all done on a contingency basis. You have to realize that the defence, on average, will spend \$95,000 a case defending them. Ontarians just don't have \$95,000 to come drop in my trust account to fight on a dollar-for-dollar basis. Effectively, I carry the risk, or other lawyers carry the risk.

Mr. Runciman: What, on average, is the contingency? Is it 50%? How does it work?

Mr. Howe: Not even close. It varies. At my office we charge 20%. Other offices I know charge 30%. It really, I think, depends on the risk and the size of the case.

Mr. Runciman: I see; okay. With respect to your comments related to paralegals—I guess this pretty much lines up with the positions taken by the Ontario Bar Association.

Mr. Howe: Which is precisely why I went through it quickly. I knew they were presenting ahead of me. We're pretty much ad idem on that issue.

Mr. Runciman: So your organization doesn't get involved in criminal cases at all?

Mr. Howe: We do not. We have members who do more than one type of work, but our organization does not do studies in that field or lobby in that field.

Mr. Runciman: So you haven't had a really serious look at any of the other elements that are contained within this legislation?

Mr. Howe: We have not. We've looked primarily at paralegals who operate on accident benefits at the Financial Services Commission. Obviously this is an issue, because the Financial Services Commission has passed their own rules to try and get a handle on paralegals. We're very pleased that the government is finally dealing with it.

Mr. Runciman: Thank you again for bringing this to our attention. I certainly wasn't aware of the implications of this part of the legislation. It's something I think we'll pursue and ensure, as best we can from an opposition bench, that the appropriate changes are made.

Mr. Howe: Thank you. It's not a very sexy issue. There aren't that many people injured by medical negligence, but when they are, they need help.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, sir, for coming here. Yes, indeed, I appreciate very much you raising this new 116.1, because I didn't know a whole lot about it. I really didn't understand it. I put "insurance company" beside it. It just struck me that somehow, somewhere, somebody had to be benefiting from it. So help me connect the dots here.

Mr. Howe: Sure.

Mr. Kormos: I'm from Welland. That's small-town Ontario, okay? Just help me connect the dots. This only applies to victims of medical malpractice.

Mr. Howe: Correct.

Mr. Kormos: Not to victims of automobile accidents.

Mr. Howe: No, or if a pharmaceutical company sells me a bad drug or—

Mr. Kormos: Because victims of automobile accidents get raked over the coals on that \$30,000 deductible.

Mr. Howe: They have a whole different other set of problems.

Mr. Kormos: Yes, their pockets are being picked in a totally different way.

Mr. Howe: And more aggressively.

Mr. Kormos: Yes. But 116.1—

Mr. Howe: Although you shouldn't look at this government, because it was a Tory bill that's picking their pockets, to be fair.

Mr. Kormos: I remember Runciman and I fighting the last Liberal government on behalf of innocent accident victims. You weren't even near out of law school by then.

Mr. Howe: The Peterson regime; I recall it well.

Mr. Kormos: You read about it. In any event, 116.1 only applies to medical malpractice victims, right?

Mr. Howe: Correct.

Mr. Kormos: It doesn't apply to any of the other victims.

Mr. Howe: Correct.

Mr. Kormos: It doesn't create new law, because courts already have the jurisdiction to award a structured settlement.

Mr. Howe: Correct.

Mr. Kormos: Parties have the capacity to negotiate a structured settlement as all or part of the award.

Mr. Howe: Absolutely.

Mr. Kormos: So what's going on? What's the interest being served here, Mr. Zimmer? If it only applies to medical malpractice, it seems, then, that the insurer of doctors has an interest in this section.

Mr. Howe: There's a fundamental misunderstanding in that statement. There is no insurer of doctors. There's

the Canadian Medical Protective Association, which is a government-funded body. The way insurance companies will make money off this is that they hold the structures and they make commissions and money off the investment of the money.

Mr. Kormos: The CMPA, that's colloquially—I told you I was from Welland.

Mr. Howe: Sure, but they're really not an insurance company.

Mr. Kormos: All right, but they're the ones who defend doctors vigorously.

Mr. Howe: Very.

Mr. Kormos: They go to the ropes, right?

Mr. Howe: Absolutely.

Mr. Kormos: No cost is spared.

Mr. Howe: I haven't seen it.

Mr. Kormos: And that's why you say that only 10% get to an award, right?

Mr. Howe: That's correct.

Mr. Kormos: So doctors fund the CMPA.

Mr. Howe: The government funds it.

Mr. Kormos: What about OMA involvement?

Mr. Howe: I understand that it's part of the agreement between OHIP and doctors, the way they're remunerated. Depending on what your specialty is, 65% to 90% of your premiums to CMPA are paid directly by the government.

Mr. Kormos: Who do you think got to the government on this? Connecting the dots, where should we end up?

Mr. Howe: I believe that the CMPA believes this is in their best interests.

Mr. Kormos: Because it—?

Mr. Howe: I think it gives them a negotiating tool to say to plaintiffs, "Well, we can settle this case without a structure or a judge is going to force a structure on you." It gives them another negotiating tool before trial and it gives them a way, on some calculations, which I don't think are valid, to save money on claims—not defence costs, but claims.

Mr. Kormos: On awards.

Mr. Howe: On the victim.

Mr. Kormos: Yes. And who ends up paying for that? Who suffers? If they benefit, who suffers?

Mr. Howe: The victim gets less money.

Mr. Kormos: Does that seem fair, Mr. Zimmer, from your perspective?

Mr. Zimmer: You're asking the questions.

Mr. Kormos: Yes, I am. I want to know if you think that seems fair.

Thank you very much. I appreciate your raising 116.1.

Mr. Howe: That's what we're here for. Thank you for your time, gentlemen and ladies.

ASSOCIATION OF MUNICIPALITIES OF ONTARIO

The Chair: The next presentation is from the Association of Municipalities of Ontario. Good morning.

Mr. Brian Rosborough: Good morning.

The Chair: Can you please state your name for the record?

Mr. Rosborough: Yes. Ladies and gentlemen, my name is Brian Rosborough. I'm the director of policy of the association of municipalities and am very pleased to be with you here today.

Our president, Roger Anderson, sends his regrets. He's on his way to the northwestern municipal conference in Thunder Bay today and isn't able to be with us, so I'm delighted to be here in his stead. I have a copy of my speaking notes; it's being circulated now.

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The Association of Municipalities of Ontario—AMO—is, I believe, well known to the committee members. AMO represents Ontario's municipal governments and advocates on behalf of those governments and the property taxpayers and residents they represent. AMO's member municipal governments govern and provide key services to approximately 10 million Ontarians—approximately one in three Canadians, in fact.

AMO well understands the need for improved access to justice. We are very supportive of the intended outcomes of this bill in terms of modernizing and improving the public's access to the justice system, including improvements to the justice of the peace system. We appreciate the task of this committee to achieve that end, as well as the members' appreciation of the particular challenges facing the municipal sector in helping to deliver justice services in our communities.

I plan to comment on only two of the bill's six schedules, for two reasons. First, the committee will receive submissions from our sister associations that specialize in delivering justice-related services. Second, AMO strongly believes that while the bill contains many important provisions, one schedule in particular is long overdue and must be brought forward and passed as expeditiously as possible. Given this, we're thankful for the opportunity to share our perspectives on Bill 14 today.

For years, AMO and others in the municipal sector have advocated the need to address the critical shortage of justices of the peace in Ontario. This shortage has resulted in case backlogs, cases dropped and losses in revenue to municipal governments as a result of uncollected fine payments for potential prosecutions. Most importantly, this shortage has compromised access to the justice system for the residents of Ontario, both those who have broken the law and the communities that have to uphold the law.

AMO has been joined by the Municipal Court Managers Association of Ontario, the Municipal Law Departments Association of Ontario, the Prosecutors Association of Ontario, the Ontario Association of Chiefs of Police and the Ontario Association of Police Service Boards in advocating for more justices of the peace to be appointed across Ontario. I should say, it's an issue and a challenge for municipalities of all sizes in all parts of Ontario. It's not specifically a large urban issue or a cities issue; it affects communities in every part of the prov-

ince. However, despite our efforts to date, few appointments have been made over the years by successive governments.

Moreover, even after a justice of the peace is appointed, there is a significant training period, which still leaves municipalities with a void. Worse still, even if a justice of the peace is appointed, it does not guarantee that they will be working on Provincial Offences Act issues. Many letters received from the Attorney General indicate that bail hearings and warrants get priority over POA offences, for obvious reasons.

In the past, the Attorney General's office has suggested that a budget does not exist to support the hiring of justices of the peace. However, under the transfer agreements signed by municipalities and the Attorney General resulting from the transfer of POA responsibilities by the previous government, a formula was created for municipalities to pay the costs of justices of the peace used for POA offences. Shortages also exist due to scheduling difficulties, illness, workload responsibilities and retirements. Unfortunately, this chronic shortage has had a profound impact on Ontario's municipalities.

As a result of the lack of justice-of-the-peace resources and the consequent backlog of cases being tried, municipalities and the province may both be in breach of the memorandum of understanding between the province and municipalities regarding POA issues, which states that "the confidence of the public in the justice system must be maintained through every effort by all parties. To this end, open access to the system and a fair and timely process must be assured."

The shortage of justices of the peace also results in police officers waiting sometimes for hours to meet with a justice of the peace on warrant issues. This waiting time results in fewer police officers on the street, a diversion of police resources and added costs for municipalities. Furthermore, citizens are not being served appropriately. Some accused persons are, we understand, being held beyond 24 hours since there's not a justice of the peace available to make decisions about remand and release. When cases are dismissed due to delay, municipalities lose potential revenues resulting from uncollected potential POA fine activities. All of this is in spite of the fact that the funds do exist to hire justices of the peace, because municipalities pay the province for the court time of justices of the peace on POA matters. In sum, more justices of the peace must be immediately assigned to meet the shortage.

That's why today we are making really but one request, and that is, if it is not in this committee's will to expedite the passage of the bill in its entirety, to separate and fast-track schedule B, which we consider to be time-sensitive in regard to the issue of appointment of justices of the peace. AMO recently—in March—wrote to the Attorney General and the leaders of both opposition parties with a request to separate and fast-track schedule B for some of the reasons I've mentioned. The main reason for this was that we believe the proposals contained in schedule B are fairly straightforward and po-

tentially not contentious and could bring immediate relief to Ontario's POA courts, unlike the remainder of Bill 14, which, as we've heard this morning, may contain some potentially contentious issues. We suggest that by separating schedule B the Legislature could provide immediate relief to a pressing concern while allowing adequate time, if needed, for discussion of the remaining sections of this important piece of legislation.

AMO is very pleased that schedule B contains: proposed changes to make the appointment of justices of the peace more transparent; the inclusion of minimum qualifications for justices of the peace; the ability for retired justices of the peace to be hired on a per diem basis to hear specific matters, including POA offences; and the provision for an expanded Justices of the Peace Review Council.

These changes will provide municipalities with greater access to justices of the peace specifically to preside over POA offences. Since municipalities already pay an hourly rate when justices of the peace preside over POA cases, it will not result in new costs but will provide access to a wider pool of justices of the peace to clear up case backlogs. Moreover, the new generation of justices of the peace will be better prepared for the challenges that face them.

We have urged in our correspondence, and we do urge, all three parties to lend their support to the changes proposed in schedule B.

Beyond schedule B, we draw your attention to two other issues where we would like to indicate our support in regard to schedule E that affect the municipal sector. AMO supports the proposal to allow POA witnesses to provide testimony electronically. We believe that this could help solve the problem of law enforcement officers not always being available to appear in court. This additional flexibility could help alleviate dropped cases and ensure that valuable police resources are perhaps better directed to community policing initiatives and activities. AMO also supports the ability to use alternative mechanisms for resolving disputes about municipal bylaws, such as parking violations and other things.

In conclusion, the proposed changes in Bill 14 specifically in regard to schedule B are a good first step toward improving the efficiency of the justice system in this province from the municipal perspective, and AMO looks forward to working with the government to develop the supporting regulation in this regard.

Simply put, we want schedule B in force as soon as possible, so that Ontario's communities can acquire the additional justices of the peace that they urgently need. We believe it's imperative to move quickly to enact schedule B in order to provide immediate relief to the provincial offences court system by enabling the appointment of per diem justices.

I'd like to thank members of the committee for the opportunity to speak to with you today, and we'd be prepared to answer any questions.

The Chair: Thank you. That leaves about four minutes for each side. We'll start with the official opposition; Mr. Runciman.

Mr. Runciman: Thanks very much for your submission. It's an issue that I certainly had an interest in with respect to the availability of JPs. Obviously the number of JPs is a concern of the municipal sector with respect to the Provincial Offences Act. As you're probably aware, the unavailability of JPs has long been a concern of the policing community, especially on weekends and in the early morning hours, and the refusal of JPs over the past seven, eight, 10 years now, since I think it was the NDP government did away with per diem JPs. There seemed to be this growing trend in terms that judicial independence was the overriding mantra, that competence and public interest seemed to take second place in many respects. With judicial independence, they don't go into jails anymore to do bail hearings, they don't go to the police stations. Now that they're on salary, of course, they're not going to get out of bed on weekends. I can't tar everyone with the same brush, but I know that this is a significant problem and has significant costs, which are picked up by the police services and the correctional system, as a matter of fact, in the province because of the so-called judicial independence issue that seems to be infecting JPs.

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I'm pleased that the government, through this legislation, is bringing back per diem JPs, but I think the limitations are too severe with respect to their ability, and they're only talking about retired JPs performing in this role, as I recall the legislation. So that's a concern of mine.

I wanted to talk a bit about the Provincial Offences Act with you. One of the concerns with the transfer of responsibility for the POA—and I found this in my own riding. When the United Counties of Leeds and Grenville assumed this responsibility, there was something like \$2 million in unpaid fines. That has now grown to, I think, \$5 million in unpaid fines. Apparently, prior to the transfer, the provincial government had the ability to work with the Ministry of Transportation to go after these folks who were refusing to pay their fines, to get their location and go after them. Now, with the municipalities having that responsibility, they no longer have that access. So these unpaid fines, which are very significant in terms of costs or benefits to a region—they're frustrated and it's growing on a regular basis.

I don't assume that that's isolated to Leeds and Grenville. I think it's a significant problem across the province and I'd like to hear your views on it.

Mr. Rosborough: It's a related issue and one that many of our members, even quite recently, have started to raise as an issue to put on the forefront of our advocacy agenda. Recently I received some information from the city of Windsor, for example, which has quite astronomical amounts of unpaid fines. There have been variable experiences with different municipalities across the province. It's not something that I have currently in-depth knowledge of, but it is something that we have agreed to explore further in the work that we do at AMO.

and to bring forward a detailed analysis in terms of our advocacy work.

The Chair: Mr. Kormos?

Mr. Kormos: The government whip is taking attendance.

Why do you think it's necessary for schedule B to become enacted before the government can deal with the shortage of justices of the peace?

Mr. Rosborough: We believe that schedule B contains some important innovations in terms of justices of the peace. For example, the provisions around the hiring on a per diem basis of retired justices is something that can take currently trained and experienced justices of the peace and put them back into action quite quickly.

To my knowledge, there's not a range of systemic barriers that prevent any government from appointing justices of the peace, but we do believe that some of the measures in this bill have very solid public policy backing behind them and are to be supported. One of them is that, with the hiring of retired JPs on a per diem basis, that can expedite the process.

Mr. Kormos: I agree with you. Hallelujah. Finally some minimum standards for justices of the peace. That's been a pork barrel of political patronage. Short of building your brother-in-law a liquor store—and those days are long gone—what we've got left is appointing justices of the peace.

What's interesting, though, is the most recent judicial appointments—there were two announcements. Mr. Runciman, you might find this interesting. The one out of Sudbury had, in the last two tax years, donated money to the Liberal Party. But he was sort of like me, desperately trying to win the Princess Margaret lottery; he'll keep buying them till he wins. In the two prior years, he was donating to the Conservative Party. He finally, obviously, grabbed the brass ring.

My concern is that even when schedule B passes—the government has a majority and they haven't shown any disinclination to let it pass—number one, that won't necessarily prompt the government to appoint more

justices of the peace; number two, it won't necessarily address the patronage because the process set out in the bill merely provides for the vetting of applicants, and then applicants who are cleared are presented to the Lieutenant Governor in Council.

The notorious decision, Askov and Melo—I remember it well—goes back to 1987, the last Liberal government. Mr. Runciman will recall that; he was here. We started seeing serious charges tossed out of court because of delays because of, among other things, shortages of justices of the peace, judges, courtrooms. Here we go again, 19 years later. We still have those same problems, and yet another Liberal government. What can I say? What can I add?

Mr. Rosborough: To your first point, this is not the end of our advocacy with the Attorney General and the current government on this issue. Hopefully, with an expeditious passage of this bill and this section, we'll continue to work with the attorney's office to make sure that he understands what a serious issue this is for municipalities and how the lack of JPs is undermining our ability to administer the POA.

Mr. Kormos: Thank you kindly, sir.

The Chair: Mr. Zimmer?

Mr. Zimmer: I understand you're concerned to see that this bill gets through ASAP, particularly schedules B and E. I've been hearing for months from AMO, and various members of AMO, the importance of this issue. I well remember a meeting with Mayor Hazel McCallion when she, in her inimitable, forceful way, left me with the very clear message to carry back to our government to move on this issue. We're happy to have moved on it.

I do look forward to the full co-operation of Conservative and NDP colleagues in seeing that this bill is passed ASAP and on a priority basis.

The Chair: Thank you very much.

That concludes our business for today. This committee stands adjourned until tomorrow morning, Thursday, April 27, in the same room at 10 o'clock.

The committee adjourned at 1158.

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Standing committee on justice policy

Access to Justice Act, 2006

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Loi de 2006
sur l'accès à la justice

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 27 April 2006

Jeudi 27 avril 2006

The committee met at 1002 in room 151.

ACCESS TO JUSTICE ACT, 2006

LOI DE 2006
SUR L'ACCÈS À LA JUSTICE

Consideration of Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005 / Projet de loi 14, Loi visant à promouvoir l'accès à la justice en modifiant ou abrogeant diverses lois et en édictant la Loi de 2005 sur la législation.

The Chair (Mr. Vic Dhillon): Good morning, everybody. Welcome to our second day of hearings on Bill 14, An Act to promote access to justice by amending or repealing various Acts and by enacting the Legislation Act, 2005.

ASSOCIATION OF JUSTICES
OF THE PEACE OF ONTARIO

The Chair: This morning the first presenters are the Association of Justices of the Peace, if you could come forward, please. You have 30 minutes, and if you could state your name for the record.

Ms. Mary Cornish: My name's Mary Cornish and I'm the legal counsel for the Association of Justices of the Peace of Ontario. I have provided a brief which I hope all of you have been able to obtain. It sets out the issues that we want to raise.

First of all, the association, as the name indicates, represents the justices of the peace with respect to issues affecting their bench and the administration of justice. This is a distinguished, dedicated and hard-working bench. In this regard, to give a context for their appearance in front of a legislative committee, the Supreme Court of Canada, in the PEI reference case, has commented favourably on the role that associations of the judiciary can play, in a restrained way, in terms of commenting on matters and regulation of issues between the judiciary and the executive branch and the Legislature in matters relating to the administration of justice. So in that respect that is the reason why we are here today, and we appreciate that this is a unique position to be in, but we have before the Legislature an act in relation to the regulation of the justices of the peace.

I can say at the outset that we welcomed the statement by the Attorney General back in January 2005 that he was calling for a new collaboration with the judiciary and a particular recognition of the role justices of the peace play in the criminal justice system, and also the increasingly complex issues that they face in adjudicating within that system. So in that respect the Bill 14 amendments have come forward, and certainly the association looks forward to working with the Attorney General with respect to the issues that are raised in that bill.

A number of the amendments and comments that we are making are issues which we have raised with the government over the last year in terms of communications we've had with them. They're summarized on page 3 of the brief. I'll highlight them and then I'll review them shortly so that there is time for questions, which I imagine the committee may have.

The first proposed amendment is an amendment to the Justices of the Peace Act, and it actually should read "section 6" rather than "section 9." Section 6 of the Justices of the Peace Act would be amended to provide for a mandatory retirement age of 75 rather than 70. The current Access to Justice Act doesn't make any amendment to that provision, but as you may all know, we've had a bill which ends mandatory retirement in Ontario, and this proposed amendment would be consistent then with the age of retirement for the rest of the judiciary in Ontario, who all are required to retire at the age of 75 as the result of the provisions in the Constitution Act federally.

The second amendment is a proposed amendment that we have put forward—and the actual text of the amendments are set out at chart A of the brief—to have a similar remuneration framework process for the justices of the peace as there is for the provincial court judges. I'll review and summarize that with you. Again, that is an area that is not currently touched by the amendments in the Access to Justice Act.

The third set of amendments are in fact matters that have been brought forward by the Access to Justice Act, and they provide for an amendment for an additional justice of the peace on the Justice of the Peace Appointments Advisory Committee; that the regional senior justices of the peace would be permitted the same substitution opportunity as granted the regional senior judge with respect to that committee; and that the senior justices of the peace for the native justice program would also be permitted to participate when dealing with

appointments with respect to the native justice of the peace bench. As many of you may be aware, there is in fact a system of native justices of the peace, so we're wanting to make sure there is that participation. As well, with respect to the issue of non-presiding judges—and I'll explain further some of the differences between presiding and non-presiding—we are asking that the bill specifically provide that the non-presiding justices who have been currently recommended for progression should in fact be progressed, and that should be stated within the bill itself.

Then we have some comments that are at the final part of the brief with respect to the establishing of minimum qualifications, the changes to the review council and allowing retired justices of the peace to serve on a per diem basis, but all of those are comments and support with respect to the provisions that are set out in the bill with respect to those matters.

If I can just highlight for a moment, before I go through those amendments, the profile of the justices of the peace—and I think there's sometimes some misunderstanding with respect to that. As you know, it is primarily a lay bench, but many people come to the justice of the peace system with substantial life experience—business and community experience—and experience in the legal system. As well, the average age of the justices of the peace on appointment is approximately 50, and as a result of the new minimum qualifications, many people already come to their appointment with many more years of work experience than 10. In terms of the association's calculations, by far the vast majority of the justice of the peace bench already have postsecondary education and the majority of them have university degrees. A variety of them in fact have law degrees. So the composition of the justice of the peace bench is one which already is quite distinguished. Certainly the association supports the establishing of the minimum qualifications that are set out in the bill, but we also wanted it to be clear that you already have a justice of the peace bench which meets those qualifications, and we look forward to that process being institutionalized within the bill itself.

As well, in terms of presiding and non-presiding justices of the peace, this is another one of these matters that is confusing, because non-presiding justices of the peace preside over a great number of matters within the bench, and in fact preside over bail hearings; a non-presiding justice of the peace presides over bail hearings. What non-presiding justices of the peace don't do is preside over the provincial offences proceedings—in other words, all the trials under the various statutes, and I have set them out in the brief itself; there are dozens and dozens of provincial statutes that are proceedings—as well as some federal proceedings. So there is a very significant and quite complex set of duties which justices of the peace have, and increasingly they have assumed various of those duties that have come down from duties which provincial court judges used to perform.

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In fact, Ontario is unusual across the country, and there's a statement in the brief from Justice Ebbs

indicating that many other provinces' provincial court judges carry out what justices of the peace in Ontario do. Essentially, what happened in Ontario is that a significant number of the functions which were carried out by Superior Court justices were transferred to the provincial court judges, and then provincial court judge functions were transferred down to justice of the peace functions.

That is the bench that you are currently dealing with. Section 4 of the brief talks about the comprehensive delivery of those services, in the sense that you have those services being provided at times seven days a week, 365 days of the year, so you have justices of the peace travelling all over the province each day and you have a very significant demand for those services. That's set out on page 7 of the brief, that there has been a very significant increase in the demand for justice of the peace services at a time when actually, relatively, the number of justices of the peace has been reduced. Those statistics are set out with respect to the matters which are on page 7. For example, there were approximately 330 justices of the peace three years ago; there are now 305. On December 31, 2004, a management complement plan of the court called for an additional 50 justices of the peace. Since then, you have also had retirements. So there is this increasing demand for the services, and various of the amendments that are in fact being put forward under Bill 14 will help to deal with some of those issues.

If I can then start to deal with the issue of ending mandatory retirement, in a way the matter is a simple one in that the Legislature has already decided that it is not appropriate to have mandatory retirement in Ontario for other Ontarians. The only exception to that provision that was set out in the Human Rights Code—and it's actually a provision which is found in the brief at the bottom of page 8 and the top of page 9—was with respect to judicial officers. In that, it says that the exception is that the judicial officers will be dealt with according to their respective pieces of legislation, and the pieces of legislation determine the age at which they are to retire.

As I indicated before, the Constitution Act for federally appointed justices says that it's to be 75. The civil masters, case management masters, retire under the Courts of Justice Act at 75, as do provincial court judges. We ask that that provision be implemented with respect to justices of the peace as well. We asked the government to make this amendment. The government's response to that was that this was a remuneration issue and should be dealt with as part of the remuneration commission. Our position is that this is a human rights issue for the justices of the peace and that the Legislature already decided that any remuneration implications of a mandatory retirement issue did not override the right of justices of the peace, and other Ontarians in fact, to be able to retire based on their own choices and abilities. So we are asking that the matter be dealt with as an amendment to the Access to Justice Act to provide for the similar retirement age.

Apart from the human rights issue and the issue of whether the current provision of the act would in fact violate the charter, there are a number of public policy

reasons why you would want to do this. The act allows the per diem justices of the peace. Provincial court judges can now continue, after they formally finish full-time, to work on a per diem basis after age 65, for example, and provide a very important contribution to the court in terms of their continuing to provide those kinds of services and flexibility to the court. That also occurs in the Ontario Superior Court.

So now what you are doing is having justices of the peace being required to retire, who in fact have very important contributions that they could continue to make and could help with respect to the current shortage of justices of the peace. Furthermore, in terms of a recruitment issue, a lower retirement age for justices of the peace in the justice system doesn't make sense for those who wish to have the flexibility to work past age 70.

That is our presentation with respect to that issue.

If I can move on to the request for a fair and constitutional remuneration framework, the submissions that are set out here are quite detailed and I'm only going to try and briefly summarize them for you.

Justices of the peace have a different remuneration commission framework and criteria than provincial court judges. We are asking that they be the same. This is the process by which remuneration is determined. We are not talking about whether or not the remuneration should be the same; we're talking about whether or not the remuneration process should be the same. As some of you may be familiar with, because of the judiciary's independence, the Supreme Court of Canada has indicated that there needs to be an independent framework for setting out and a commission that makes recommendations with respect to their remuneration.

In Ontario back in the early 1990s, the Ontario government negotiated with the provincial court judges a framework agreement which was incorporated into the Courts of Justice Act and which provides that the independent commission's recommendations with respect to remuneration are binding on the government. That is the current law which is in effect for provincial court judges.

In the PEI reference case which actually came after that, the Supreme Court of Canada commented favourably on the activity of the government in negotiating with the judges with respect to the appropriate remuneration framework. As you may know, it is otherwise impermissible for the judiciary to negotiate directly with the government with respect to remuneration because of their independent status and it is that reason why the process is set out more independently through the commission.

At the same time the government negotiated that framework, it actually set up an independent ad hoc commission for justices of the peace, using the same criteria and purpose clause that the judges did but putting it in an order in council. That commission, in 1995, evaluated the work of justices of the peace and made a report. The then government rejected the report, and after a number of years the Association of Justices of the Peace of Ontario took the government to court. In 1999, the divisional court ruled that the government had violated the

principles of judicial independence and was required to set up an independent remuneration commission for justices of the peace. That remuneration commission was set up and is now regulation 319/00 in the current Justices of the Peace Act.

But that process had what we describe in the brief as "inferior criteria" and also was not binding and did not have the purpose clause. It was not negotiated with the association of justices of the peace, but was imposed unilaterally by the government.

We then proceeded through two independent commissions subsequent to that remuneration framework, and last March we put forward these proposals to have the government adopt the provincial court judges' framework. We set out in the brief how the government has argued that the inferior criteria and the lack of the purpose clause in fact do not permit justices of the peace to bring forward a number of what we think are important factors. For example, the justices of the peace, apart from Manitoba judges, are the only judiciary in Canada who don't have a section in the clause which says any other relevant factor may be brought forward to a commission. A variety of these arguments have been used by the government and private commissions to restrict what can be considered by them.

It is our position that it makes sense for the judiciary that act as partners in this Ontario court of Justice to have the same remuneration process. If you look at appendix A, it sets out the chart and compares the various provisions, and sets out essentially an amendment to the Justices of the Peace Act and regulation which would mirror the provincial court judges' remuneration process. We are now in the process of moving forward to the fourth commission, which will likely commence hearings in the fall, so we are asking for that to be considered by the Legislature.

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If I can then move on to the next set of amendments, which relates to the justices of the peace appointments committee. We're asking for an additional justice of the peace to be put on the appointments committee to ensure that there is no decrease in the judicial representation. At the moment, for example, in the provincial court judges process, three of the 11 members of the council are in fact judges. We are also asking to make sure that the quorum provisions make it clear that any decision of the committee needs to have a justice of the peace input with respect to the decision of the appointments committee. As I indicated before, it's very critical and important to the justices of the peace bench that there be a fully functional and operational native justice of the peace system, so it is very important that there be representation with respect to that.

With respect to phasing out and progressing the non-presiding justices of the peace, as you'll see when you take a more detailed review of the duties of non-presiding justices of the peace, they're very substantial. I think currently it is very important for the bench that they be in a position where they can contribute as fully as they can.

There are many that are currently, as they phrase it, ready to be progressed but have not been progressed. As you may see when you review the brief, there's a very substantial pay difference currently between the justices of the peace who are presiding and non-presiding. They have not been progressed, so we're asking that that occur. This will also open up a significant number of other justices of the peace who can then deal with matters under the Provincial Offences Act, which would also help in terms of access to justice.

I've already commented with respect to the minimum qualifications. We're pleased with the amendments with respect to the review process for justices of the peace. Allowing the retired justices of the peace to retire and serve on a per diem basis we think is very appropriate, and if the mandatory age of retirement is extended, that would provide for further judicial resources.

Those are all our submissions, and I would be happy to take questions from the committee.

The Chair: Thank you very much. There are about three minutes left for each side. We'll start with the official opposition. Mrs. Elliott?

Mrs. Christine Elliott (Whitby-Ajax): Just a question with respect to the appointments committee now. There's one person that's allowed, one justice of the peace?

Ms. Cornish: Yes.

Mrs. Elliott: In terms of the total number of people, what percentage would that bring it up to?

Ms. Cornish: Well, the current bill is structured so it's an alternative in the core. It can be either somebody who is a judge or somebody who's a justice of the peace, and what we're saying is you have to have a justice of the peace.

The Chair: Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you very much, Ms. Cornish, for a valuable contribution. I am fascinated by the disparity between provincial judges' retirement age and JPs' retirement age, and I think the government has some explaining to do in that regard. I, of course, don't delight in noting that they were exempting provincially appointed judiciary from their much-ballyhooed legislation purportedly eliminating retirement age.

I recall the event you're talking about in 1995. The process was a three-year process?

Ms. Cornish: The provincial court judges' negotiation took place in 1992 and ended up in amendments to the Courts of Justice Act in 1993. In 1993, there were discussions with the justices of the peace which ended up in an order in council, I think in late 1993, and that then proceeded to a report in 1995. The report came out in 1995, just as the government changed, and as a result of these criteria, using the same criteria that judges have, it made a very substantial increase to the justices of the peace salary. The justices of the peace currently still only make \$4,400 more than that report recommended back in 1996, and of course the government did not implement that report.

Mr. Kormos: Would a salary based on a percentage of the provincial judge salary not be a similarly acceptable approach?

Ms. Cornish: Certainly from the Association of Justices of the Peace, their position is that there should be a link between them. The issue is, what is the link? What is the appropriate remuneration in relation to that? We think the most appropriate comparator relationship is between themselves and the provincial court judges; not that they should make the same remuneration, but that there should be a link between them of some sort. That would be the easiest way in terms of moving forward with respect to these commissions, to make them simpler and more efficient.

Mr. Kormos: It would be very efficient to simply say "a percentage of the provincial judges' salary," wouldn't it?

Ms. Cornish: It's interesting; at the current time, actually, civil masters by statute make the salary of a provincial court judge, for example. The Legislature has already decided that that link should be made. I don't think anybody has yet sorted out a particular percentage. Of course, in a way, it will always depend upon what sets of duties are given to each bench. But you do have provincial court judges and justices of the peace across the province, both in the same sets of courts and really making very disparate—

Mr. Kormos: The Ontario Association of Chiefs of Police, in their now notorious report on justices of the peace, which was, as I recall reading it entirely anecdotal, entirely basically reports back from various jurisdictions, prompted concerns about some of the observations made in that report: JPs who don't want to or decline to go to local lockups, local county jails, detention centres, to do remands, who don't want to do late-night duty in the police stations. Can you comment on that?

Ms. Cornish: I think, as we've tried to set out in the brief itself, the justices of the peace already have very extensive obligations. We have justices of the peace in night court; we have justices of the peace in weekend bail courts; we have justices of the peace driving many hours a day. It's a very hard-working court, and there are a number of issues related to delivering those judicial services. I think the bench as a whole looks forward to working with all of these partners in the system in terms of trying to sort out the best way to do it. One of the best ways to do that would be to appoint more of them.

Mr. David Zimmer (Willowdale): Just on the retirement issue, as you know, the judges have a supernumerary status where they can retire at 65, or at least go on supernumerary status.

Ms. Cornish: And so do justices of the peace, but they can only do it to 70.

Mr. Zimmer: Ah, that was my question. Then not allowing the retired justices of the peace to serve on a per diem basis, how does that complement the so-called supernumerary status? How do they link together?

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Ms. Cornish: Because once you're doing that as well, you can in fact—you now have justices of the peace at age 70 who have to stop working, who could otherwise continue to serve on a per diem basis until age 75 if they chose. Some may work only for part of the year with respect to that. For example, many senior justices in all of the courts sometime are also the justices who are involved in training, because they're the ones who are most able to do that. Even if you appointed a justice of the peace now, there's a significant amount of time that's used in initial training before that justice of the peace is able to start to work fully, and certainly senior justices would be involved in being able to do that.

Mr. Zimmer: Just on the appointments committee, I gather what you'd like to see, roughly, is the justices of the peace appointments process mirror the provincial court appointments process committee.

Ms. Cornish: We want what we've actually said here, which isn't exactly a mirror. What we pointed out was that in fact in the provincial court judges, there are actually three. There's nowhere near three in this process. In fact, the core of the process, of the core committee, could potentially have no one on it who is a justice of the peace.

Mr. Zimmer: Last question: On the so-called non-presiding justices of the peace being recommended for progression, how does that recommendation process work now?

Ms. Cornish: As I understand it, the Office of the Chief Justice makes a recommendation with respect to those who can be progressed. I understand, however, that there are also remuneration implications to progressing, and I gather those are forwarded to the—I think ultimately the ministry has to deal with it.

Mr. Zimmer: What are the criteria for progression? Do you have any thoughts or knowledge on that?

Ms. Cornish: I'm not sure I can assist you with that. All I know is that there are some that are already currently ready to be progressed and that the statute could in fact progress them.

Mr. Zimmer: Is it your sense that it's a performance issue, a skills issue or an experience issue?

Ms. Cornish: I think it's a remuneration issue.

The Chair: Thank you very much.

ONTARIO COLLEGE OF SOCIAL WORKERS AND SOCIAL SERVICE WORKERS

The Chair: The next presentation is from the Ontario College of Social Workers and Social Service Workers. Good morning and welcome to the committee. Could you please state your names for the record?

Ms. Glenda McDonald: I'm Glenda McDonald. I'm registrar of the Ontario College of Social Workers and Social Service Workers.

Ms. Debbie Tarshis: I'm Debbie Tarshis, and I'm legal counsel to the Ontario College of Social Workers and Social Service Workers.

The Chair: You have 30 minutes. You may begin any time.

Ms. McDonald: Thank you, first of all, for letting us appear before the committee. We're pleased to do so.

The Ontario College of Social Workers and Social Service Workers is a regulatory body created under the Social Work and Social Service Work Act. We regulate two professions: the professions of social work and social service work. Currently, we have approximately 11,000 members. As with most regulatory bodies, our primary duty in carrying out its objects is to serve and protect the public interest.

The college understands that Bill 14, the Access to Justice Act, would, if passed, regulate paralegals and give consumers a choice in qualified legal services while protecting people who get legal advice from non-lawyers. The college supports the regulation of professions in order to protect the public from harm.

In terms of our main conclusions and recommendations, we wish to say that we support the regulation of professions in order to protect the public from harm. In particular, the college supports the regulation of paralegals by the Law Society of Upper Canada as being in the public interest.

However, the college is concerned that the description of legal services under Bill 14 is so broad that it would include services that are currently performed by members of our college. The college proposes that Bill 14 be amended to exclude those classes of professionals that are not intended to be regulated by the Law Society of Upper Canada, specifically members of the College of Social Workers and Social Service Workers.

By way of background, the college is a regulatory body, as I've said, created under the Social Work and Social Service Work Act. We regulate the professions of social work and social service work. We have approximately 11,000 members. We serve and protect the public interest in the carrying out of our objects.

Social workers and social service workers are employed in a broad range of settings in which health care and social services are delivered. Many social workers and social service workers are employed in hospitals, schools, group homes, shelters, correctional facilities, children's aid societies, the Office of the Children's Lawyer, family service centres, income support programs and home health services. Many social workers are also self-employed in private practice, providing mediation services and alternative dispute resolution.

Social workers help and empower individuals, families and communities to resolve problems that affect their day-to-day lives. People consult social workers when they are going through difficult periods in their personal, family and work lives. Social workers help identify the source of stress or difficulty, make assessments, mediate between conflicts, offer various forms of counselling and therapy, and help people to develop coping skills and find effective solutions to their problems.

Social service workers also work with a wide range of clients and, in so doing, use assessment, evaluation and

referral skills. Furthermore, social service workers develop an appropriate treatment and/or action plan for the particular client group with whom they are working. Social service workers intervene in crisis situations, and depending on specific job requirements, social service workers may provide counselling to individuals, families or groups regarding emotional problems.

The concerns of the college with respect to Bill 14 relate to the breadth of the description of the provision of legal services, and that services performed by members of the college would appear, on their face, to fall within this description.

In our brief, we specifically note the definition of "legal services" as provided in Bill 14, but I won't repeat it here in the interests of time. Specifically, we're concerned with the description of "legal services" in the bill and the definition of "representation in a proceeding."

Social workers work with children in a number of settings, including family counselling, child welfare proceedings and custody and access proceedings. They may conduct custody and access assessments or investigations on behalf of the Office of the Children's Lawyer. In these roles, they may "select, draft, complete or revise a document that relates to the custody of or access to children," which as you may know is one of the definitions of "provision of legal services" within the proposed bill.

Social workers who provide mediation services or alternative dispute resolution may also draft parenting plans, memoranda of understanding, minutes of settlement or agreements with respect to child and spousal support, any of which may be considered to be "a document that affects the legal interests, rights or responsibilities of a person," again contained within the definition of "legal services" in the bill.

Social workers also act as evaluators under the Health Care Consent Act and as assessors under the Substitute Decisions Act. Both of these roles involve the assessment of an individual's capacity, and a social worker's role may include "selecting, drafting, completing or revising a document for use in a proceeding before an adjudicative body," which again is in the definition of "legal services," such as the Consent and Capacity Board.

Also, a social worker who is a capacity assessor may be involved in "selecting, drafting, completing or revising a document that relates to the estate of a person or the guardianship of a person."

These are but a few examples of the types of functions performed by members of the college that appear to fall within the description of provision of legal services under Bill 14.

Section 26.1 of Bill 14 prohibits a person who is not a licensee of the Law Society of Upper Canada from providing legal services in Ontario. Section 26.1 of Bill 14 also prohibits a person who is not a licensee of the Law Society of Upper Canada from holding out or representing that the person is a person who may provide legal services in Ontario. A person who contravenes section 26.1 is guilty of an offence and, on conviction, is liable to a fine of not more than \$25,000 for a first

offence and not more than \$50,000 for each subsequent offence.

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The college understands that Bill 14 contemplates that the Law Society of Upper Canada may, by bylaw, permit persons or classes of persons who are not licensees to provide legal services in Ontario and to prescribe circumstances in which persons who are not licensees are permitted to provide legal services. While these provisions of Bill 14 appear to authorize exemptions to be made by bylaw enacted by the Law Society of Upper Canada, in the view of the college, exemptions from the provision of legal services should be addressed in the legislation itself so that it is the Legislature that determines the persons who should be exempt from the description of the provision of legal services.

To do otherwise is to take this important public issue of who should be governed by Bill 14, and who should not be, out of the hands of the Legislature. In particular, those persons who are already members of a regulated profession and subject to the standards of practice and regulatory processes of a regulatory body should be assured by legislation that they can continue to provide the services they provide as members of a regulated profession without being required to become licensees of another regulatory body.

For these reasons, the college proposes that Bill 14 be amended by excluding those classes of professionals that are not intended to be regulated by the Law Society of Upper Canada, specifically members of the College of Social Workers and Social Service Workers, which also includes members of the college who practise the professions of social work or social service work through professional corporations.

For such purpose, the college proposes that section 26.1—to be added by section 22 of schedule C of Bill 14—be amended by:

(a) adding subsection (9) as follows:

"(9) This section does not apply to a member of the Ontario College of Social Workers and Social Service Workers or a corporation incorporated under the Business Corporations Act that holds a valid certificate of authorization issued under the Social Work and Social Service Work Act, 1998."

(b) making subsections (1) and (2) of section 26.1 also subject to subsection (9).

The college also proposes that any other amendments as may be advisable or necessary in order to exempt members of the college from the application of Bill 14 be made.

That's the end of our presentation, and thank you for the opportunity.

The Chair: Thank you very much. We have about seven minutes each. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you very much. I appreciate the submission because it's been a matter of concern for a whole lot of us here. As recently as yesterday, Mr. Runciman, on behalf of the Conservatives, raised it with respect to any number of professional and other regulated

professions, like mortgage brokers, real estate agents, for example.

I specifically put the issue of mediators to the spokespeople here for the law society and the response, quite frankly, was shocking because the suggestion was that perhaps people preparing minutes of settlement, minutes of agreement should be people regulated by the law society. That's my recollection of the response by the law society spokespeople here. So that was pretty alarming.

Mr. Zimmer, please, you did focus on subparagraph vii of paragraph 2 of subsection (6):

A person who "selects, drafts, completes or revises, ...
"vii. a document for use in a proceeding before an adjudicative body."

That's pretty imprecise and broad. Let's take a look at what they include in adjudicative bodies naturally: obviously courts, provincial courts, federal courts, tribunals, federal and provincial, commissions or boards, federal or provincial, and arbitrations—private arbitrations, literally, where since they're private, one expects the parties to be able to have unfettered ability to choose who will be their representative, their advocate. I think you've raised some alarms.

But what about your proposition? This is where the flaw is in the bill, Mr. Zimmer, because the college has come up with an amendment where you exempt members of the college. I appreciate the amendment, but surely you don't want to blanket-exempt members of the college who might be in fact providing legal services in a way that is contrary to the spirit or the intention, as we perceive it, of the act, do you?

Ms. Tarshis: I think a member of the college who is acting outside the scope of practice of social work is subject to the regulatory jurisdiction of the college and therefore would be subject to discipline proceedings by the Ontario College of Social Workers and Social Service Workers. I think the appropriate manner to deal with that kind of issue would be through the regulatory processes of the college that regulates the members.

Mr. Kormos: Sure, and that's where it has to be clear that the exemption applies to members of that college doing work that is sanctioned and regulated by that college.

There was other shocking evidence yesterday by a spokesperson for the federal organization of immigration consultants, who explained to us that it was his understanding that the law society would exempt from regulation immigration consultants who belonged to this voluntary federal body. Again, Mr. Zimmer, that was rather peculiar, wasn't it? It's sort of like saying—and the OBA probably wouldn't mind this proposition—if you join the OBA, then you could tell the law society to go pound salt. That's effectively what the law society said to the spokesperson as he understood their comments about belonging to the federal organization of immigration consultants, and if you belong to that federal body, you could then hold yourself out as a paralegal/immigration consultant without worrying about the law society supervising you. You've highlighted and focused on some real problems here that are going to take

a little bit of time to unravel. I'm hoping that the government will respond appropriately. Thank you very much.

Mr. Zimmer: Thank you for your submission. We recognize the great work that the college does in assisting people working through some very difficult social issues and the like.

On page 5 of your submission you say, "Social workers work with children in a number of settings, including ... counselling, child welfare proceedings and custody and access proceedings." It goes on to say, "In these roles, they may 'select, draft, complete or revise a document that relates to custody of or access to children.'" And further down, "Both of these roles involve the assessment of an individual's capacity, and a social worker's role may include 'selecting, drafting, completing or revising a document for use in a proceeding before an adjudicative body,' such as the Consent and Capacity Board." It goes on to say that you may also be involved in, again, "'selecting, drafting ... or revising a document that relates to the estate ... or the guardianship of a person.'"

Those narrow issues of selecting, drafting and preparing documents and consents in front of adjudicative bodies, which have real legal consequences—somebody may be giving up something or acquiring something. There can be complex legal issues involved in that narrow piece of work: selecting documents, executing documents and advising on documents and consent orders and the like. Where would you draw the line as to when someone at the college, a social worker—how far would they get into this process of assisting with documentations and consents in front of adjudicative bodies before you might be concerned that they're getting into legal issues beyond their skill and training? How do you protect against people not getting the right legal advice in those narrow matters?

Ms. McDonald: We're certainly not proposing that people not seek legal advice and instead get advice from social workers. What we're commenting on is that part of the role of social workers in activities that they're already able to do and doing well could be caught by the definition of legal services as set out in Bill 14. As our legal counsel said earlier, it is within the standards of the profession that people are to know the extent and the parameters of their competence and not to act beyond those. We're not suggesting that social workers would substitute for lawyers or paralegals in these kinds of situations, but we're saying that some of the activities that they currently perform in these functions, which they're able to do, are authorized to do and do well, could be caught by the definition.

1050

Mr. Zimmer: One of the backgrounds to the Access to Justice Act we talked about yesterday—people refer to it as a consumer protection piece. We're really protecting the end user, in this case people who are using your services. How do we ensure that persons working with a college member receive the right advice, that is, they get the right social worker advice? What's the guarantee that

the social worker knows where to stop and call in the paralegal or indeed the lawyer?

Ms. Tarshis: I think in many respects it's the rationale for why you have different professionals regulated in the public interest by different regulatory colleges. To some extent, it's not significantly different from a social worker appreciating that he or she shouldn't be providing nursing services. You rely on the regulation of the profession by the regulatory body in the public interest to ensure that its members act within the scope of practice and within the scope of their competence, and if members are not so doing, they will go through the appropriate discipline proceedings within their respective college. I think the issue of how you delineate between scopes of practice and preventing professionals from acting beyond the scope of their practice is one that is handled through the regulation of various professions and their professional bodies.

Mr. Zimmer: Do members of your college receive specific training or course work on where to draw that line between moving into legal services or moving into nursing advice, as you said? Is that a specific component of training programs?

Ms. Tarshis: The educational background for social workers ranges from a bachelor of social work up to a Ph.D. in social work. The extent to which the educational programs go into where the limits of one's practice stops will depend on the various faculties that are providing the educational background.

The Chair: The official opposition.

Mrs. Elliott: I'd like to thank you for your presentation this morning, because you are again highlighting some of the significant concerns that we have with respect to the definition of legal services. While I appreciate what your goal is in terms of sort of a blanket opting out of social workers and social aid workers, I share Mr. Kormos's concerns that there may be situations where there are some legal services that are being conducted. So my suggestion would be that you may want to consider adding something along the lines of acting within of course the scope of their work, as defined by the act, but then you run into the problem again of what legal services are. So we go around in a circle and come back to a very imprecise definition. I think that's something we're all trying to deal with. I'm not sure that a blanket opting out is perhaps the answer, but I think we do need to look more closely at the definition of legal services, because it's leaving all kinds of groups—yours being one of them—in a quandary about where you end up. It's difficult to advise your members where to stand when it hasn't been clearly defined.

I thank you for drawing attention to this.

The Chair: Thank you very much.

PROSECUTORS' ASSOCIATION OF ONTARIO

The Chair: The next presentation is from the Prosecutors' Association of Ontario, if you can please

come up. You have 30 minutes. Please state your names for the record.

Mr. Doug Meehan: Good morning, honourable members. My name is Doug Meehan, president of the Prosecutors' Association of Ontario. With me today is Jane Moffatt, vice-president of the association. I'm also the manager of prosecutions with the city of Mississauga, and Jane is a prosecutor with the regional municipality of Durham.

Thank you for the opportunity to address the committee this morning. We are very pleased to have this opportunity today to make comment on the general direction and specific provisions contained within Bill 14, the Access to Justice Act.

I will preface our comments by telling you a bit about our association. The Prosecutors' Association of Ontario was formed in 1995 by Paul Dray, who, by the way, is the first paralegal appointed as a benchler of the law society. Our association is comprised of legal counsel and prosecutors from municipal, provincial and local agencies. In 2005, our membership consists of over 330 prosecutors who specifically practise within the provincial offences courts, from Thunder Bay to Niagara and from Windsor to Ottawa. Our mission is to promote integrity, professional standards and independence of prosecutions through education. The mandate of the legislation committee, chaired by Ms. Moffatt, includes monitoring programs and initiatives of provincial or federal governments which impact the prosecution of provincial offences.

Bill 14, the Access to Justice Act, will of course significantly impact upon the prosecution of provincial offences, specifically in relation to paralegal regulation, amendments to the Provincial Offences Act and justice of the peace reform. These are the three areas in which our presentation will focus.

I will briefly speak to the issue of paralegal regulation, and the balance of this presentation will be delivered by Ms. Moffatt.

First, let me say this on behalf of our members: congratulations. Congratulations to the Attorney General and to this government for tackling head-on the controversial yet critical issue of paralegal regulation. For years, every justice stakeholder has agreed that regulations are necessary, but they could not agree on an approach. By involving stakeholders, developing greater consensus will result in a regulatory regime that will have a significant impact on the quality and integrity of the provision of paralegal services in the province. Paralegal regulation will improve access to justice, while ensuring protection of the public through a system which demands accountability by the providers of such services.

Last year, it was announced that a college advisory group was being formed—a partnership between the Law Society of Upper Canada and Ontario community colleges—charged with developing educational standards and programs related to the licensing and regulating of paralegals. Other than the training provided by the Ministry of the Attorney General to its own staff, our

association is the only provider of provincial offence prosecution educational training in Ontario. Our annual workshops and week-long training conferences bring together a remarkable diversity of experience relating to provincial offence prosecutions and enforcement, including experienced counsel, crown attorneys, directors of crown operations, prosecutors, police, judges and justices of the peace. As such, we renew our offer to assist in the development of educational standards and programs for licensed paralegals.

Defendants charged with provincial offences are often represented by paid defence agents, paralegals who specialize in provincial offence matters, most commonly in the area of Highway Traffic Act contraventions. Prosecutors in the provincial offences courts work with these people every day, most of whom are experienced agents who welcome paralegal regulation and who deserve the recognition and respect that passage of Bill 14 will provide to their profession.

1100

The prosecutors' association recommends that rather than referring to both lawyers and paralegals as licensees, they be referred to simply as lawyers and paralegals. Those terms may be defined at the outset of the legislation and otherwise used consistently throughout. The public generally understands what a lawyer is and generally understands what a paralegal is. Using commonly understood terminology will minimize confusion from the public.

Paralegals, lawyers and all other justice partners have very strong views on what is or is not appropriate when it comes to paralegal regulation; you have heard and will continue to hear from them. At the end of the day, not everyone will be happy; full consensus may not be possible. Listen to the stakeholders, consider their concerns and make amendments to the bill as necessary, but we urge the government to stay the course and pass this legislation. It is too important to the citizens of Ontario to be delayed any further.

At this time, Jane Moffatt will continue our presentation, addressing the issues of amendments to the Provincial Offences Act and justices of the peace reform, after which we will be pleased to answer any questions you might have.

Ms. Jane Moffatt: Thank you, Doug, and good morning, ladies and gentlemen of the committee. May I also add my personal congratulations on the initiative demonstrated by the Attorney General in moving forward on the regulation of paralegals. This long-awaited legislation will ensure that the public has a broader range of legal service providers to choose from, while ensuring that those services are provided by licensed professionals.

First, I will briefly comment on the proposed amendments to the Provincial Offences Act found in schedule E. In these times of limited court and judicial resources, it is critical that alternative and creative methods of adjudicating disputes be considered, particularly for very minor offences. Providing the initial groundwork to permit alternative dispute mechanisms for certain municipal bylaw contraventions is a good place to start.

Of course, parking tickets are the most obvious type of disputed offence that could benefit from an alternative dispute mechanism. These offences, after all, are absolute liability, meaning that an explanation or excuse for the offence is not a defence to the charge, although it may affect the appropriate amount of the fine. These matters are currently heard and disputed before full-time presiding justices of the peace.

We urge the Attorney General and Mr. Gerretsen, the Minister of Municipal Affairs, to consult broadly with the municipal sector to give effect to your plan to divert minor bylaw offences from the court stream. Various groups have expertise to offer both direction and guidance on this issue. You've heard from some of them, and you will continue to hear from others. They are: AMO, the Association of Municipalities of Ontario; MLDAO, the Municipal Law Departments Association of Ontario—those are the lawyers who are employed by your municipal partners; AMCTO, the Association of Municipal Managers, Clerks and Treasurers of Ontario; MCMA, the Municipal Court Managers Association; and, of course, the Prosecutors' Association of Ontario.

Naturally, any alternative dispute resolution model should provide that the ultimate arbiter of disputes be independent from any actual or perceived bias or influence by the enforcing authority.

This government is also proposing that witnesses be permitted to give evidence by video, audio or telephone conference, or other electronic means. We welcome the suggestion that today's available technology be used to allow witnesses to give evidence in any number of ways rather than in person, limited of course to ensuring a defendant's continued right to cross-examine that witness and to test that evidence.

The amendment appears not to be limited to witnesses giving evidence at trial. Subsection 83.1(2) contemplates that this could also apply to a step in the proceeding under the act. There are many steps or processes outside of a hearing that could benefit from the use of modern technology.

However, there is broad concern within the justice community and among the public regarding this section. In what circumstances would video evidence be permitted, and in what communities? How will it be implemented? Is a defendant's right to cross-examine and test the evidence preserved? This amendment to the Provincial Offences Act does not answer these questions. Rather, it is anticipated that regulations will subsequently be passed to give effect to this section. Therefore, it is critical that the Attorney General consult broadly with persons and groups within the justice community, including the judiciary, prosecutors and municipal court managers who will be central in the implementation phase of any such change.

These two amendments to the Provincial Offences Act contained in the bill reflect a commitment by the Attorney General to streamline the prosecution of provincial offences. We know that Mr. Bryant has also committed to a full review of the Provincial Offences Act in order to

put in place the most modern, efficient and effective justice system attainable. We know he has done that because that is encoded in the memorandum of understanding he entered into with municipal partners who are now responsible for operating the provincial offences courts in the province. Our association is pleased to have been invited to take an active role in the upcoming POA streamlining initiative. We are actively developing proposals that will further improve the prosecution of provincial offences and service to our community.

I will speak next to the issue of justices of the peace reform. It has been a long time coming, and we again congratulate the government for this initiative. Minimum qualifications and an interview and appointment procedure that allows for a more open and transparent process are critical to ensure the public's continued confidence in both the justices of the peace bench and the administration of justice.

The Ontario Court of Justice publishes a comprehensive application process for judges, yet none exists for justices of the peace. We are pleased that the new justices of the peace advisory committee envisioned in this bill will, among other things, develop a candidate application form, make public the procedure and criteria, and otherwise advertise for applications within each region.

The Justices of the Peace Act will be amended by Bill 14 to include provision for per diem justices of the peace. The prosecutors' association agrees that permitting a full-time presiding justice of the peace to change status to per diem will, in the long run, offer much greater flexibility in scheduling, particularly in these areas: jurisdictions where there is very high volume and demand; and presiding over multi-day or multi-week trials. Some quite complex matters dealing with environmental legislation and so on are heard before justices of the peace. It's not a 20-minute trial; it could be a two-week trial. Oftentimes, if there was a per diem justice of the peace available who could come in and deal with those rather than take away from the day-to-day workload, that would be very useful. Of course, a per diem justice of the peace would be able to cover colleagues' vacations and short- and long-term illnesses where the court of justice is not in a position—it can't hire a justice of the peace on contract; let's put it that way. So per diems would open that flexibility.

In the short term, however, this amendment may result in a reduction of the full-time justices of the peace bench complement throughout the province. Justices of the peace may choose, well before their 70th year, to convert status from full-time to per diem, and we would expect that. A reduction in the current number of full-time justices of the peace that passage of this section would cause will have damaging short-term consequences.

There is a significant shortage of justices of the peace in Ontario. It has become a chronic problem. It's a critical problem that has had devastating consequences on the level of service provincial offences courts are able to provide to the public. The province downloaded responsibility for the administration of provincial offences courts to the municipal sector in the late 1990s

and through to 2002. One of the goals was to reduce the delay in bringing provincial offences matters to trial and to at least maintain the level of service that was in effect at the time of the transfer of responsibility.

The municipal sector has invested significant and long-overdue funds on improved and expanded provincial offences court facilities, additional staff and modernized technology and equipment. The three members of the prosecutors' association who are here—Mr. Dray, our immediate past president, myself and Mr. Meehan—represent the municipalities of Brampton, Mississauga and, myself, Durham region. In Whitby, we just opened up our brand new court facility. Last year, Mississauga opened up a brand new provincial offences facility, as has Brampton. Millions of dollars have been invested into these facilities, but they don't get used if there's not a justice of the peace available to sit on the bench. They were built because they're needed.

1110

The result of the lack of justices of the peace is that existing courtrooms, let alone these new courtrooms, do sit empty across the province. Although the Attorney General has announced 26 new appointments since the Liberal government has come to power, you should understand that that includes progressions from non-presiding to presiding which are considered new appointments in these numbers. These appointments fail to cover natural attrition, let alone increased demand for judicial services.

I'll give you an example of the problem of failing to cover even natural attrition. In Durham region, my own jurisdiction, there are significant court closures due to lack of judicial resources. Central east region, which is the judicial region of which Durham is part, has seen the retirement of seven justices of the peace in 2004 and 2005. That's seven in total over those two years. An additional five justices of the peace will retire in 2006, just up until July. That's an anticipated total of 12 justices of the peace in 2004, 2005 and through half of 2006. What appointments have been made to central east in that period? There was one new justice of the peace appointed for central east in December 2004 and one again in August 2005.

There are similar problems in most jurisdictions across the province. At least in southern Ontario, this appears to be the norm, not the exception. As a result, provincial offences courts have been directed to be closed for days and weeks on end. Consequently, public confidence in the administration of justice is eroded. Defendants and civilian witnesses, often the victims of these offences, observe that justice is not served. Oftentimes, this is the first exposure that any member of the public will have with our system of justice. Therefore, it is imperative that confidence in the system is maintained. Otherwise, we risk disrespect for the law and our ability to enforce it.

No new appointments have been announced anywhere in the province since December 2, 2005, almost five months ago.

All of the associations that I mentioned and rattled off earlier, plus more, have written to the Attorney General

extensively over the last number of years regarding the shortage of the number of justices of the peace. The Attorney General is in receipt of dozens of municipal council resolutions calling upon him to act in relation to this shortage.

The Attorney General has stated that the recent new appointments have been made through an interim process modelled after the criteria set out in Bill 14. The Ontario Court of Justice has identified the need for more justices of the peace. The Attorney General and the court have not agreed on the ideal complement required in the province; therefore, a consultant has apparently been hired to study and make recommendations on that issue, and that study is apparently ongoing.

In the meantime, the Prosecutors' Association adds its voice to others, as it has many times, and urges the Attorney General not to delay in making further appointments. We understand there is a one-year training period for new justices of the peace; therefore, there is an urgent and immediate need for Mr. Bryant to act. Use the interim criteria that have been developed; don't wait for the passage of this bill. Both the Attorney General and Ontario Court of Justice can agree, we are sure, on the minimum number of justices of the peace needed, even if the ideal complement has yet to be determined.

We welcome the justice of the peace reform contemplated by Bill 14 and congratulate the Attorney General on moving forward with this issue. We would caution, however, that proclamation of the per diem provisions be deferred until such time as a significant number of new justices of the peace have been appointed and trained, so as not to aggravate the existing shortage.

Once again, on behalf of Doug Meehan, myself and the prosecutors we represent across the province, we thank you for this opportunity to address the committee and for your attention. We'll be happy to take any questions that you may have.

The Chair: Thank you very much. There are about three minutes left for each side, so we'll begin with the government.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): I'm looking at the comment you made on page 3 about how you would refer to paralegals and lawyers, and the discussion around licensees. Yesterday, we heard from a group who felt that how you would title paralegals would be based on their specialty, so that if they were traffic court, they would be a traffic court agent, so that the public would understand the extent and the scope of their practice. But you're saying here that it should still be just lawyers and paralegals. How would you make it clear to the public, in terms of paralegals, what specialties they would have?

Mr. Meehan: I think probably we could preface it with what you indicated earlier. We just want them referred to as paralegal, perhaps known as a Highway Traffic Act paralegal, just not as a licensee. We think that will add confusion to it, because as we indicated, generally everybody understands what a lawyer profession does but perhaps not a paralegal. Perhaps if it's

"paralegal restricted to Highway Traffic Act" or somehow annotated in that regard, then the members of the public would know that they're dealing with Highway Traffic Act matters—something along those lines.

Mrs. Van Bommel: I also note that you talk about using technology, the available technology. I represent a rural riding, and I know that one of the things that has always been a bit of a barrier for a lot of my constituents is the thought of having to travel a great distance to an urban centre to testify as a witness. I think in terms of the technologies that will allow us, it would probably encourage people to come forward as witnesses, where in the past one of the things that was kind of in the back of their minds before they made that decision might have been, "Do I have to travel to the city? I'm a senior. I may have witnessed something, but I don't necessarily want to come forward because it means travelling to an urban court." So I'm very pleased that you support that.

Ms. Moffatt: We also envision, if I may, that the initial implementation of video conferencing would have the greatest application initially, frankly, in the north where distances to travel, both for civilians and police witnesses, is of an immediate and great concern. Perhaps once a pilot is rolled out in the north, it can then be applied to other jurisdictions and see how it would work.

The Chair: The opposition?

Mrs. Elliott: I also had a question regarding giving evidence by video or other electronic means, and my question is about some of the concerns you expressed about the circumstances under which it might be employed or not. I was wondering whether your association had given any thought to any types of proceedings or any circumstances where it might not be appropriate.

Ms. Moffatt: When the bill was announced last fall, there was some perception in the community, which I think was incorrect, that this could be resolved in just a written statement by a witness, a police officer or perhaps a sworn affidavit. Of course, naturally that raises big concerns, because a person who has been charged has the right to face their accuser—a basic principle—and to ask them questions, to test that evidence and to perhaps reduce its strength in order to proceed with their case. The Prosecutors' Association feels that that basic tenet of procedural fairness should be maintained.

I don't expect that this government is anticipating to proceed with statement or affidavit evidence for a careless driving charge, or perhaps even a speeding charge, and I would encourage you not to. What we would envision is that the technologies in the courtroom are timed for when the proceeding is to start so that the witness is available off-site and that it is a live feed, just as if the person is there. That would be the ideal scenario.

1120

The way it has been drafted, there are provisions that other than a hearing, other evidence in a provincial offence proceeding relating to a step could also benefit from that technology. Again, particularly in the north, where a police officer, for example, needs to—a justice of the peace would issue a process, an information would

be sworn in front of a justice of the peace, a police officer or another person has to appear in front of a justice of the peace in order to have that information sworn and then a document called a summons goes to a person, which tells them they have to come to court. Again, if that would save that witness—whether it's a police officer or somebody else—having to travel who knows how many miles to a local justice of the peace intake office, then that could be very, very useful.

Mr. Kormos: Thank you kindly for coming in—a valuable contribution. Ms. Drent provided us with some research on video conferencing vis-à-vis the Criminal Code and the civil rules, which of course indicate that there's a high level of discretion used on the part of the judicial authority granting permission. So I appreciate your comments. There's a big difference between an eyewitness in a careless driving charge and a police officer swearing out a warrant.

Most provincial prosecutors, I trust, still tend not to be lawyers.

Mr. Meehan: I would agree with that, yes.

Ms. Moffatt: Many are, but the majority are not.

Mr. Kormos: That's to your credit. Many years ago, as a young lawyer, I learned a whole lot from lay provincial prosecutors about some of the legal minutiae as well as courtroom skills and talent, so I have great admiration for them.

The shortage of justices of the peace has been a recurrent theme here, especially over the course of the last three years. What is most troublesome is that from time to time the Attorney General, Mr. Bryant, has said, "Well, I can't appoint new justices of the peace until Bill 14 passes." Yet it's clear that he can, because he did as recently, Mr. Runciman and Ms. Elliott, as December 2005, three months after his bill was introduced. My concern is, while we generally applaud and support, with some criticism, the upgrading of the JP profession, because I think that's generally what the bill does, we're left with concerns about the fact that even when this bill passes—and it's now clear that because the Attorney General has been greedy about the amount of chamber time that he wants to use up for any number of pieces of

legislation, this bill won't pass until the fall—the government, even with Bill 14, isn't going to appoint new JPs. What's the problem? Are there no applicants out there who have the qualifications?

Ms. Moffatt: I think there are plenty of very good people across the province, sir.

Mr. Kormos: So there are all sorts of people who are, in your view and in your experience, because you work with them on a daily basis—and you're in as good a position as any to know what kinds of skills a JP needs. So we've got the qualified people; the passage of Bill 14 isn't an impediment. We know that because the government did appoint one or two JPs in December 2005. What's the problem? We've got the courtrooms, huh?

Ms. Moffatt: We do indeed.

Mr. Kormos: But the lights are off; nobody's home?

Ms. Moffatt: In many cases, and far too frequently, that's true.

Mr. Kormos: Help me. I really, dearly need your help: What's the problem? Why aren't JPs being appointed?

Ms. Moffatt: I think the minister could better answer that question than I can, but it may very well come down to the basic thing that prevents many governments from doing what they know they should be doing: It may come down to money. I don't know.

Mr. Kormos: Thank you kindly, folks.

The Chair: Thank you very much.

The last presentation is from Rosalie Muraca. Is Rosalie here?

Mr. Kormos: What time is it, Chair?

The Chair: It's about 20 after 11. She wasn't expected to appear till 11:30, so if we could maybe recess for 10 minutes.

The committee recessed from 1125 to 1138.

The Chair: The time now is about 11:35. The last presenter was Ms. Rosalie Muraca and it doesn't seem like she's here. There's no sense in holding everybody up and waiting, so we will adjourn this committee until some time in September. Thank you very much.

The committee adjourned at 1138.

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Jeudi 11 mai 2006

**Standing committee on
justice policy**

**Comité permanent
de la justice**

Emergency Management
Statute Law
Amendment Act, 2006

Loi de 2006 modifiant des lois
en ce qui a trait à la gestion
des situations d'urgence



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 11 May 2006

Jeudi 11 mai 2006

The committee met at 1003 in room 228.

SUBCOMMITTEE REPORT

The Chair (Mr. Vic Dhillon): Good morning, and welcome to the meeting of the standing committee on justice policy. This morning we're meeting to consider Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997.

The first order of business this morning is the adoption of the subcommittee report. Can I have somebody read the subcommittee report.

Mr. Lorenzo Berardinetti (Scarborough Southwest): I will read the subcommittee report. It reads as follows:

Your subcommittee considered on Monday, May 1, and Monday, May 8, 2006, the method of proceeding on Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 56 in Toronto on Thursday, May 11, and Thursday, May 18, 2006.

(2) That the committee request the authority of the House to sit on Monday, May 15, 2006, after routine proceedings, until 7:30 p.m. for the purpose of public hearings on Bill 56.

(3) That the clerk invite the Ministry of Community Safety and Correctional Services to provide a technical briefing to the committee for 20 minutes on May 11, 2006.

(4) That the deadline for those who wish to make an oral presentation on Bill 56 be 12 noon on Wednesday, May 10, 2006.

(5) That witnesses requesting to appear before the committee be given 20 minutes each in which to make their presentation.

(6) That the clerk, prior to the deadline of May 10, start immediately to schedule witnesses to appear for 20 minutes each on May 11, 2006.

(7) That an advertisement be placed for one day in the Toronto Star, Globe and Mail, National Post, Toronto Sun, Toronto Metro and L'Express newspapers, and also be placed on the ONT.PARL channel, the Legislative Assembly website and in a press release.

(8) That the ad specify that opportunities for videoconferencing and teleconferencing may be provided to accommodate witnesses unable to appear in Toronto.

(9) That the subcommittee meet again to make decisions on dates for clause-by-clause consideration.

(10) That the deadline for written submissions be the end of public hearings on Bill 56.

(11) That the research officer provide the committee with a summary of civil liberties issues raised during the previous committee consideration of emergency management issues.

(12) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(13) That options for videoconferencing or teleconferencing be made available to witnesses where reasonable.

(14) That requests for reimbursement of travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(15) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

I would move adoption of the subcommittee report.

The Chair: Any debate? All those in favour? All those opposed? The motion carries.

EMERGENCY MANAGEMENT STATUTE
LAW AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À LA GESTION
DES SITUATIONS D'URGENCE

Consideration of Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997 / Projet de loi 56, Loi modifiant la Loi sur la gestion des situations d'urgence, la Loi de 2000 sur les normes d'emploi et la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail.

MINISTRY OF COMMUNITY SAFETY
AND CORRECTIONAL SERVICES

The Chair: The first presentation is from the Ministry of Community Safety and Correctional Services. It's a technical briefing.

Mr. Peter Kormos (Niagara Centre): Why are we keeping audience members in the dark, Chair? Is this a result of Mr. McGuinty's electricity policy?

Mr. Berardinetti: On a point of order, Mr. Chair: Just for the record, it's raining today, so it's a bit darker than usual.

The Chair: Good morning. Could I have your names for Hansard?

Mr. Glenn Murray: Good morning. My name is Glenn Murray, and I'm the assistant deputy minister of the policy and public safety programs division of the Ministry of Community Safety and Correctional Services.

Mr. Jay Lipman: Jay Lipman, counsel for the Ministry of Community Safety and Correctional Services.

Mr. Stephen Waldie: Stephen Waldie, policy director at the Ministry of Community Safety and Correctional Services.

The Chair: You may start.

Mr. Murray: As the Chair indicated, we're here to provide a brief technical overview of Bill 56, the Emergency Management Statute Law Amendment Act. I believe you have a set of slides before you; if I could start on page 2. Just to remind you, the bill was introduced in December and carried on April 25.

The bill would provide the Premier or the cabinet, as the case may be, a broad range of powers that can be implemented during a state of emergency. The federal government and all provinces and territories except Ontario have comprehensive legislation that allows the centralization of power during emergency situations. The bill, like in other Canadian jurisdictions, would create extensive powers to cover a range of circumstances within the context of an emergency.

I'll take you to slide 3 and give you a bit of background on Bill 138, which, as you know, preceded Bill 56.

On June 29, 2004, the Legislative Assembly referred the development of emergency powers legislation to the standing committee on justice policy. The committee held public hearings in August and October of 2004, and the committee's work culminated in a draft statute, Bill 138, which was tabled in November of that year.

Following the introduction of Bill 138, the Ministry of Community Safety and Correctional Services was directed to coordinate possible amendments to the bill. Bill 56 followed, and includes a number of amendments to Bill 138. Some of the amendments to Bill 138 approved by cabinet include revising the purpose, criteria and tests for the making of emergency orders; adding a power to order the collection, transportation, storage, processing and disposal of waste during an animal health emergency; and expanding the job protection scheme to ensure the rules are sufficiently comprehensive.

Slide 4: I want to be clear that the bill respects civil rights. The central theme of Bill 56 is achieving a balance between extraordinary powers to make emergency orders and the safeguards or accountability framework governing the exercise of the powers. The bill does contain a

long list of powers with respect to evacuation, controlling travel, establishing facilities and requisitioning property, but it also contains extensive safeguards and accountability mechanisms. For example, all orders must be consistent with the charter. Another example of an accountability measure would be the requirement for the Premier to provide a report to the Legislative Assembly. We'll talk a little bit more about reporting requirements in the last slide of the presentation.

If I could turn your attention to slide 5, declarations of provincial emergencies would be made by cabinet. A declaration may be made by the Premier, but only in urgent circumstances, and it must be confirmed by cabinet. The bill contains criteria that must be met before a declaration can be made. The key criterion is that a declaration should not be made if the matter can be dealt with using the resources normally available to the government. Declarations cannot extend for more than 14 days, unless renewed.

1010

Continuing on page 6: However, cabinet can renew a declaration, only once, for a further 14-day period. Thereafter, only the Legislative Assembly can continue the declaration. Renewals by the Assembly can be for a maximum of 28 days, but there's no limitation on how many renewals may be made. The Assembly can also disallow a declaration of an emergency at any time.

The bill also sets out a list of powers that can be exercised in a declared emergency. The powers set out in the bill are similar to the powers that are found in emergency legislation in Canadian and other jurisdictions. This includes powers relating to the regulation or prohibition of travel; evacuation; establishment of facilities for the care, welfare, safety and shelter of individuals; price-fixing; and authorizing persons to perform services.

I want to clarify that the bill does not require persons to perform services; it simply authorizes them where they are reasonably qualified to do so.

The powers are all contained in the list in the bill on pages 3 and 4.

Continuing on page 8: As with emergency declarations, the bill contains fairly strict tests relating to the exercise of emergency powers. The tests include a purpose for which the orders can be made, criteria that must be met and limitations on the making of each order.

There are additional criteria that must be met before any order is made. For example, the proposed emergency order must be a reasonable alternative to other measures that are available to address the emergency. The order-making power is conferred on cabinet; however, cabinet may delegate the power to a minister or the Commissioner of Emergency Management. If delegated to the commissioner, the commissioner's orders only last for two days, unless confirmed before then.

Page 9: Bill 56 provides that emergency orders prevail over any statute. The one exception is the Occupational Health and Safety Act, which sets out the rights and duties for all parties in the workplace. Its main purpose is to protect workers against health and safety hazards on

the job. The Occupational Health and Safety Act establishes procedures for dealing with workplace hazards, and it provides for enforcement of the law where compliance has not been achieved voluntarily. The employer would be required to meet his or her obligations under the Occupational Health and Safety Act, even if it meant not complying with an emergency order made under the act.

Job protection, on page 10: Bill 56 amends the Employment Standards Act to provide a certain degree of job protection in an emergency. The job protection scheme provided under Bill 56 is broader than that under the SARS Assistance and Recovery Strategy Act.

An employee is entitled to a leave of absence without pay if the employee will not be performing the duties of his or her position because of an emergency declared under the bill and because of an order that applies to him or her made under the Emergency Management Act, an order that applies to him or her made under the Health Protection and Promotion Act, or he or she is needed to provide care or assistance to certain family members as identified in the bill.

Bill 56 includes a regulation-making authority that could set out grounds for job protection by regulation. Under this approach, specific grounds for job protection could be established depending on the nature of the emergency.

Page 11 sets out the protection from liability. Bill 56 contains the usual provision that protects government and municipal officials from personal liability for acts carried out in good faith, while the right to sue the crown or a municipality is preserved. Section 11 sets out the general personal liability protection for persons acting under the act or emergency orders. Such protection is afforded to members of council, municipal employees, ministers of the crown, crown employees and any other individual acting pursuant to an emergency order made under the bill from liability for actions taken in good faith in the performance of their duties.

Page 12: Bill 56 contains significant penalties for failing to comply with an order or obstructing a person in carrying out an order. With respect to failure to comply with an order or interfering with a person acting under an emergency order, Bill 56 provides for offences of up to \$10 million for corporations, \$500,000 for corporate directors and officers, and \$100,000 for other persons. In the case of individuals, imprisonment may also be imposed for not more than one year. Bill 56 also contains an additional enforcement mechanism to enforce emergency orders through the civil courts. Similar provisions occur in other major provincial legislation such as the Health Protection and Promotion Act.

The last slide deals with reporting requirements. Bill 56 expressly requires the Premier or a delegated minister to report to the public during the emergency. In addition, the bill requires that the Premier table a report on the emergency in the Legislative Assembly within 120 days of the termination of the emergency. The report must specifically address any emergency orders made and

provide a justification for those orders. A similar report must be prepared by the Commissioner of Emergency Management with respect to any orders made by the commissioner. The commissioner's report must be integrated with the Premier's report.

That represents the highlights of Bill 56. I would be happy to entertain any questions.

The Chair: Thank you. We'll start with the official opposition, less than four minutes each.

Mr. Garfield Dunlop (Simcoe North): Thank you very much for being here today and for the briefing you just gave us. I want to go right to the portion that I think was on page 9 or 10. Let me use an example; let's say, nursing staff at a hospital. An emergency is declared. Would a nurse or nurses or doctor or doctors have the opportunity to refuse to report to work if they felt that they or their family were in danger as a result of the emergency, without any repercussions in the future?

Mr. Murray: They can ask for a leave without pay, but I'm going to ask legal counsel to answer that more fully.

Mr. Lipman: The job protection scheme is based on certain grounds. They would have to meet those grounds in order to be entitled to the leave of absence. As Glenn pointed out, the bill provides for additional grounds to be set out by regulation, but the first step would be to determine whether or not they actually meet the grounds set out in the bill; i.e., an order under the Health Protection and Promotion Act applies to them or they have to be at home to take care of specified family members.

The Chair: Can I get you to introduce yourself again? Our technical people missed your name.

Mr. Lipman: Jay Lipman, counsel with the Ministry of Community Safety and Correctional Services.

The Chair: Thank you very much. You may continue.

Mr. Dunlop: So we won't know the exact details of that until we actually see the regulation. For example, I'm worried about, say, a young mother, a nurse, who is afraid to go to work because she thinks she may come into contact with something that may affect her children back home later on that week, that month or even later in their lives. I think that's a question we're going to hear a number of times from different people. What I'm basically saying is, how will that impact their careers? If they refuse to come to work because they thought in their own conscience that they had a problem that could impact their family, could they lose their jobs?

Mr. Lipman: You're right. It will depend on regulations that may be made, and those regulations may not be made unless we have an emergency or depending on the nature of the emergency, but right now the grounds for the leave of absence are set out in the bill. The simple concern that you don't want to go to work may not be sufficient. You need to meet the legislative grounds.

Mr. Dunlop: Do I have any more time?

The Chair: No. Mr Kormos.

1020

Mr. Kormos: Thank you to ministry staff who prepared the briefing books for us. They're very valuable. Pass that on, parliamentary assistant.

The nub of the bill for me, of course, is the emergency powers and orders. I've got some questions. "The regulation or prohibition of travel to, from or within any specified area"—I don't know. I'm from Welland, but it seems to me that the OPP and other authorities shut down highways all the time, whether it's the Trans-Canada up where it gets washed out as you get toward Kenora, or northern roads or wintertime roads. What's new here? Don't police shut down highways all the time under the right conditions, currently?

Mr. Murray: Sure they do, and in a state of emergency we want to clear about that. Jay, did you want to add specifically to that?

Mr. Lipman: Yes, you're right. The police have the common-law authority to close roads where there are unsafe conditions.

Mr. Kormos: Airports get shut down all the time—not all the time, but from time to time.

Mr. Lipman: I think this adds maybe more central authority for that kind of order. It gives it—

Mr. Kormos: Okay. Fair enough. The evacuation of individuals: Is there a penalty provision here in the bill?

Mr. Lipman: There's an offence provision in the bill.

Mr. Kormos: Yes. So what's being suggested: that the evacuation power gives power to physically, forcibly remove people from their homes, should they not want to leave their homes, or that they're going to be subject to a penalty for not complying with an order?

Mr. Lipman: There may be a question about what it authorizes in terms of, say, the degree of force that can be used.

Mr. Kormos: Is it clear in the bill?

Mr. Lipman: No.

Mr. Kormos: That's unclear.

"The authorization of facilities, including electrical generating facilities, to operate as is necessary...." I found that very interesting. Why would we need some sort of emergency power from the Lieutenant Governor in Council, Premier, energy czar to authorize an electrical generating facility? Are you talking about ones that may not otherwise be legal because they wouldn't have passed environmental assessments or they wouldn't be using a fuel source that is appropriate?

Mr. Lipman: The primary purpose of that is in fact to authorize facilities to operate in a manner that they may not be permitted to operate in under existing—

Mr. Kormos: Give me an example.

Mr. Lipman: One of the issues that came up in the power blackout was that there were certain generating stations that were in a position to produce more electricity, but because their certificate of approval limits the amount that they can produce, they were legally unable to produce more than their certificate permitted them to do.

Mr. Kormos: Is "unconscionable," as used in "unconscionable prices"—again, there are lawyers who can probably help—a legal term? I use the phrase so often in reference to so many successive governments and their

policies, but is that a legal term? Is that something that courts have a handle on? They know what it means?

Mr. Lipman: It is a legal term, certainly. The term was derived, actually, from US legislation, because there is no Canadian price-fixing legislation really, or I should say no prohibition on price gouging in any of the Canadian jurisdictions. But there is in the States, and they use the term "unconscionable."

Mr. Kormos: Gouge, but just don't gouge unconscionably.

Mr. Lipman: I guess it's trying to get at what "gouge" means.

The Chair: Thank you, Mr. Lipman. Can I just get you to speak closer to the mike; they're having trouble picking up your voice.

The government side.

Mr. Bas Balkissoon (Scarborough–Rouge River): I just want to say thank you very much to the staff, as Mr. Kormos has, for your presentation and clarification of the bill. Thanks for giving us that input.

I just want to pursue one point with Mr. Lipman in terms of the leave of absence, the entitlement to the employee. I think the whole issue of this being put in the bill is because of the situations that arose around SARS, where some employees actually lost their jobs because of the emergency that occurred then. This particular clause is being put in to protect that from happening in the future.

Also, to clarify the question that came from the other side, if there is an emergency declared in a particular situation—let's say it's a health emergency—you wouldn't expect a person working for the hydro facilities to take a leave of absence. That's where the bill is clarifying the process, and that's where the regulations will come in. Am I correct?

Mr. Lipman: Yes, that's correct. This is designed to address those circumstances where the person is unable. Otherwise, for the most part, emergency workers and others who would have expectations to do their jobs in an emergency couldn't just say, "I don't feel like going in today." This is designed to deal with those situations where the person is unable to. They may be doing work elsewhere in the emergency or they may be subject to an order, like a quarantine order, that tells them they can't go to work. That was certainly the focus of the SARS legislation.

Mr. Balkissoon: Okay. Thank you very much.

Mr. Kormos: I thought you were talking about Dennis Mills when you were talking about people who lost their jobs.

The Chair: Thank you very much, gentlemen.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: The next presentation is from the Ontario Public Service Employees Union. Good morning. If I can get you to state your name, you may begin any time you like.

Ms. Patty Rout: First of all, I would like to apologize for the fact that Leah Casselman is not present. She was to make this presentation. I'm her stand-in for today. I'd like to say good morning. It's a blurry day, but it's a good day.

I'm appearing here on behalf of the Ontario Public Service Employees Union. On OPSEU's behalf, I wish to thank—

The Chair: Excuse me, if I can just interrupt. Can I have your names for the record?

Ms. Rout: My name is Patty Rout.

Mr. Roman Stoykewych: Roman Stoykewych, general counsel to OPSEU.

The Chair: Thank you very much. You may begin.

Ms. Rout: I am appearing here on behalf of OPSEU. I wish to thank the committee for giving us the opportunity to talk about something so extremely important. I am an executive board member of OPSEU and chair of the OPSEU health council. I'm also chair of the OPSEU hospital professional division. I am a laboratory technologist from Lakeridge Health, Oshawa, and I've been a laboratory technologist for 33 years. Roman will be assisting me with this presentation today.

We have prepared a written brief for the purposes of this presentation, in which we include OPSEU's analysis of the employment-related issues arising out of the proposed legislation. We have included our recommendations by which the interests of our members, as well as the public interest, might be better protected. In addition, we have attached to our presentation the submission that was prepared by our union and ONA for the Campbell commission. These latter submissions, we think, provide the committee with an extremely valuable chronicle of the experience of our hospital workers during the SARS crisis: the extraordinary chaos that arose out of the lack of preparedness and coordination and the completely unacceptable, even in the context of an emergency, health and safety risks that employees were required to undergo.

We believe there are critical lessons to be learned from this fiasco and strongly believe that they should not have to be learned twice. If there is a single message we wish to bring to you today, it is that preparedness and coordination during the course of an emergency are all-important to the public, but also to ensure the safety of emergency workers. We believe that enhanced reliance on existing structures of employment, such as collective agreements that are in a vast majority of hospitals and health facilities, is the direction in which the legislation should direct all of the participants in an emergency. Our recommendations, which we will detail in a moment, are in support of that general position.

But first, I think it is important that the committee appreciate who it is that OPSEU speaks for. We are over 30,000 health care professionals and workers in the province of Ontario, representing technicians, social workers and emergency service workers, who all place their lives at risk during a pandemic outbreak. Many of these employees worked in Toronto at the time of SARS.

In addition, OPSEU represents ambulance paramedics, environmental officers, fire safety officers and meat inspectors—in short, the entire range of service employees who serve as the wall between the Ontario public and the next pandemic or the next Walkerton, the next train derailment, truck explosion or even acts of bioterrorism. All of these employees, and not just the workers engaged in health care, may be directly in harm's way in the event of an emergency. They are employees who, by virtue of their occupation, risk their lives to ensure that the public interest is served. We believe, and we are sure that the committee will agree, that they should not be exposed to unnecessary risk.

1030

The first two recommendations that we make with respect to the current legislation relate to our experience during SARS. As Justice Campbell repeatedly stated, it is really common sense: It is extremely important that there be a well-established set of rules setting out our tasks and defining the lines of authority during the course of an emergency. This was almost completely lacking during SARS. Various hospitals were improvising completely new methods of staffing and were, remarkably, taking the position that the existing rules governing work, including the terms and conditions of our employment set out in various collective agreements, simply didn't apply any more. There was chaos and there was more chaos.

We do not believe that experimenting with completely new ways of running a complex facility should take place during an emergency and, instead, think that the opposite direction should be taken. OPSEU believes that employers and their bargaining agents should utilize their existing collective agreements—which already set out the various provisions for staffing, scheduling, pay, emergency premiums, training, protection of occupational standards, accommodation of our employees and other matters that are essential to the running of a complex organization—as a basis for the employment of emergency workers. Provided that there is a clear consensus that these issues are to be dealt with jointly, collective bargaining is a remarkably flexible manner of addressing issues as they arise during the course of an emergency, and the parties to a collective agreement could and should be able to deal with the various needs presented in an emergency.

We believe that the existing agreements—that is, our collective agreements—provide for the best guarantee that there will be good communication, clear accountability, and fair and sustainable employment during the course of an emergency. Therefore we recommend, as is set out in pages 3 and 4 of our submission, that the government expressly provide that existing collective agreements serve as the basis of employment during the course of an emergency and, to the extent that there are no collective agreements in place, any orders that may have the effect of requiring employees to work during the course of an emergency should specifically state the terms upon which these employees would be required to work.

OPSEU is extremely pleased to see the proposed legislation providing for continued operation of the occupational health and safety legislation during an emergency. We welcome this as an important recognition that the health and safety of workers engaged in emergency services should be a central concern during an emergency. Nevertheless, we believe that the provisions protecting emergency workers should be strengthened during the course of an emergency in order to reflect the obvious fact that they are working in conditions of increased hazard.

As we set out in our brief, on pages 5 through 7, this kind of protection is particularly important for the bulk of employees who are likely to be utilized during the course of an emergency. These are, for the most part, employees who have extremely limited recourse to the basic protection that is afforded to the majority of workers in Ontario, and that's the right to refuse unsafe work. Consequently, the protections that emergency workers are afforded should be strengthened during an emergency. In particular, we believe that there should be legislative recognition that joint occupational health and safety committees are the forum in which issues relating to the health and safety of employees involved in the emergency ought to be addressed. The joint committees are established under the act as the forum in which the actual experience of workers can be brought to bear upon decisions relating to health and safety. Critical information can be shared with management, and the decision-making regarding health and safety is demonstrably improved by the operation of this process. The Legislature recognized this years ago.

Remarkably, during the SARS crisis, the joint committees were routinely ignored by hospitals. As is detailed in our joint submission that is attached to our brief, it is remarkable that more tragedies didn't occur, in light of the fact that the health and safety of workers was jeopardized without recourse to the basic mechanisms for ensuring safety. The joint committees can and must operate during an emergency, and we urge the committee to reflect on this.

We also believe that the second method of protecting the health and safety of workers is the intercession by the Ministry of Labour, which ought to be strengthened during the course of an emergency. Once again, most of these workers do not have the full ability to refuse unsafe work, and as a result, the role of the Ministry of Labour's occupational health and safety branch is of great importance. The ministry alone is able to put an end to practices that are hazardous and unsafe. During the SARS crisis, we actually saw the ministry decline to come into our workplaces to look at health and safety issues.

We believe that the Ministry of Labour should be directly involved at an early stage, including the prep stages for an emergency, in order that we may acquire the necessary technical expertise in matters related to the handling of emergencies. We further believe that the director of the health and safety branch, who is re-

sponsible for the operations, should be required to consult with the joint committees in affected establishments in order to ensure that the provisions of the act are complied with.

Without these steps, we respectfully submit, the language in the proposed legislation providing that the OHSA is in full effect during the course of an emergency is just a symbolic gesture. As the bargaining agent for employees who must risk their lives during the course of an emergency, we would see this as a very hollow promise.

Justice Campbell has made it very plain that clear assurances to employees who are about to commence working during the course of an emergency, thereby exposing themselves to extraordinary hazards, should be made so that they know, in advance of an emergency, that their interests will not be adversely affected by doing so. This is not just required to meet a basic principle of fairness to the employees—a principle which, we say, should be enough to satisfy the committee—it is also a matter of exceptional significance to the general public, because it is only with such assurances that employees will willingly engage in such extraordinary activity. We believe that the proposed statute ought to be amended so as to provide additional assurances of this sort.

We believe that the act should provide for a broader indemnification of employees who are engaged in emergency work. The committee should be aware that employees, particularly those who are governed by professional bodies, are frequently required to perform acts during the course of an emergency in a manner that may bring their conduct into question in litigation. The current legislation does provide for indemnification in the event of a finding of liability; however, it doesn't provide indemnification for the costs of a defence to such allegations. The mere defence to such allegations can be crippling to an employee who is not found to be liable. It would operate as a serious disincentive to willing participation during the course of an emergency. We have set this out on pages 7 and 8 of our brief, where it refers to the Police Services Act.

As we set out on pages 8 and 9 of our brief, OPSEU believes that there are insufficient protections for employees who would suffer monetary losses as a result, for example, of an extended quarantine. Consistent with Mr. Justice Campbell's recognition that these matters be dealt with ahead of time, we propose that there be developed a compensation package, known to employees in advance, to take into account the predictable forms of pecuniary loss by employees.

OPSEU is also of the view that the protection against termination that the act provides is neither fair nor sufficient and that further, more extensive protections must be provided to employees who may be taken from their normal duties as a result of their participation. Currently, the proposed legislation provides only that there be protection against loss of employment. We do not think that is sufficient, as these employees are not guaranteed that their previous position will be available

to them or that their position will not be altered to their disadvantage as a result of their absence. Accordingly, on page 9 of our brief, we recommend that the legislation should be amended to include protection against adverse employment effects.

1040

Finally, OPSEU is of the view that the proposed amendment to the Employment Standards Act setting out the duration of the leave of absence is insufficiently clear and may lead to some anomalies that we expect are unintended. Currently, the duration of the leave that an employee is provided depends on the duration of the emergency, and presumably that the employee's protection from adverse employment consequence would cease when the emergency is terminated. However, we can see circumstances in which an employee should be permitted to extend an absence from work for a period after the emergency has ended. For example, an employee may be quarantined or otherwise prevented from returning to work after the emergency has been declared over, and such an employee should have protection under the ESA and should not be liable to discipline or adverse employment consequence for overstaying a leave of absence.

We therefore recommend that the language of the proposed legislation be amended to include a reference to a reasonable period of time after which the employee will be required to return to work, and ask that this very complex provision be rethought.

In summary, then, OPSEU believes the existing mechanisms for regulating employment and health and safety in establishments that are subject to emergencies—namely, collective agreements and the health and safety legislation—ought to be strengthened.

I would like to thank the committee for this opportunity, and we'll answer any questions.

The Chair: Thank you. There are about two minutes for each side remaining. We'll start with the NDP.

Mr. Kormos: Thank you kindly, both of you. With only two minutes, I'm interested in your comments about the role of the Ministry of Labour during the course of the SARS crisis. I suspect that most of us had occasion, in one way or another, through visiting our local hospitals during that crisis, to see the incredible role that health professionals, health care workers, did at great risk to themselves, as is well known. Tell us about the Ministry of Labour and what they did or didn't do in terms of obviously addressing issues of workplace health and safety.

Ms. Rout: First of all, our joint occupational health and safety committees weren't used. The union said to our higher-ups that they should be using these committees. They refused to do that. So we said, "Okay, we're going to call the Ministry of Labour." They said, "No, you're not going to call the Ministry of Labour. We're going to let the health official at the Ministry of Health decide what's going to happen here." We said, "Yes, you are going to call the Ministry of Labour." So they called the Ministry of Labour in many hospitals, and they didn't come into the workplace; they just talked to

us on the phone. They did not want to come in. Now, whether—

Mr. Kormos: Was this the proverbial telephone inspection that we had criticized, or was it simply the refusal to attend at the workplace?

Ms. Rout: It was a telephone call, and they didn't come in to see what was happening.

Mr. Kormos: Was there any response by Ministry of Labour officials who conducted even these telephone investigations?

Ms. Rout: They gave us guidelines. They gave us procedures we should be following, but certainly they never talked to the workers; they talked to the management.

The Chair: Thank you very much. The government side.

Mr. Balkissoon: Thank you very much for taking the time to come and make your presentation to us, and thanks for your input.

Just one question: The fact that the act itself clearly states now that the Occupational Health and Safety Act will remain in place and is not affected by this act: You don't feel comfortable that if there's a second situation or another situation in the future—many of us hope there will never be one—that under different rules your concerns would happen, and SARS will not occur?

Mr. Stoykewych: If I could answer that, the fact that the Occupational Health and Safety Act is in place during the course of an emergency doesn't really change the legal situation that was in place during the SARS crisis, because of course during that time, the Occupational Health and Safety Act was in full effect, and in certain cases with disastrous consequences.

We believe that an emergency is a time at which heightened legislative action is necessary to ensure the health and safety of employees who are placing their lives at risk. The joint health and safety committees must be acknowledged during the course of an emergency to be the necessary method of resolving issues concerning the health and safety practices in establishments. We also believe that because of the history in which employers had routinely ignored those committees and routinely ignored the bargaining agents of the employees in the hospital, we simply can't have the status quo remain as a solution. The history speaks for itself, and we need some action on this.

Mr. Balkissoon: My last question, if I have time: The collective bargaining process and the collective agreement between each employer and employee group is certainly different from establishment to establishment. This piece of legislation is to deal with emergencies. Wouldn't a situation like that for the joint committee be better addressed in the collective bargaining process and be included in your bargaining agreement?

Ms. Rout: They are included in our collective agreements. It's the fact that the hospitals during SARS decided they didn't have to follow the collective agreements. They were thrown out the window.

The Chair: The official opposition.

Mr. Dunlop: A very quick question: I appreciate your being here. I think it's about three years ago right now that SARS was right in—

Ms. Rout: Yes, and it still gives me goose bumps.

Mr. Dunlop: I thought this bill would have been before the province before now.

I know you've made a number of recommendations here today, but in its current form, can you support the bill without any amendments?

Ms. Rout: No. It's very clear that workers need their collective agreements to be followed and we need to be ensured that the health and safety legislation will be followed by our employers. I don't think this does that.

The Chair: Thank you very much.

ONTARIO ASSOCIATION OF EMERGENCY MANAGERS

The Chair: The next people up are the Ontario Association of Emergency Managers. Good morning, sir. Perhaps I can get you to state your name for the record.

Mr. Alain Normand: My name is Alain Norman. I'm president of the Ontario Association of Emergency Managers.

The Chair: Thank you very much. You may begin.

Mr. Normand: The Ontario Association of Emergency Managers represents 450 professionals in the emergency management field working in the province of Ontario. Although some of our members work in provincial and federal ministries and agencies, private industry and non-profit organizations, the majority of our members actually work in municipalities.

The primary role of the emergency manager is to ensure that citizens, business and stakeholders are protected to the best of our ability during an emergency. With the increase in number, intensity and range of impact of emergencies we have experienced in Ontario over the last decade, the work of the emergency manager has become more and more complex. Our members are on the front lines of emergencies on a daily basis and understand very well what is at stake when an emergency strikes our communities.

We have reviewed the proposed Bill 56 thoroughly. In essence, we support the proposed bill. We recognize that the province of Ontario needs to provide powers to the Premier and his designates to take extraordinary actions during emergencies. We are generally glad to see some of the safeguards instituted, such as limits in the duration of emergency orders, ratification by cabinet for extension of duration and full disclosure to the public through a detailed reporting mechanism. We do have concerns, however, with some of the provisions of the bill, and even more with the absence of others.

A basic principle of efficient management is that wherever lies the authority must also lie the responsibility. Every management manual teaches this doctrine, according to which these two elements must be in balance to ensure proper management. In short, we

contend that this bill is heavy on authority but very light on responsibility.

In this bill, the provincial government gives powers to the Lieutenant Governor in Council, the Premier, any minister to whom the Premier delegates the authority and to the commissioner of public safety. The powers are so vast that they can turn our province into a government-run state for a period of time. The Premier can become the owner of absolutely everything and anything in the province as he sees fit if it can be justified for the purpose of managing the emergency.

1050

As I said earlier, emergency managers understand well why these provisions are instituted, and we agree with the need for such provisions. However, there is nowhere in this bill any provision for the Premier or his designates to take responsibility for the actions they propose to take during emergencies. As we have seen so many times before, the orders will come from the province but the enforcement will be left completely up to the municipalities.

While we applaud the provision that attaches a penalty for those who hinder our response, the issue for us is in determining who will police this. The municipality's resources will be geared toward the response and will not be sufficient to identify and charge those who are acting contrary to the law.

The amendments are a good start but need to be more comprehensive in detail and scope to ensure that we have the appropriate tools to respond. Time and time again, the municipalities are told that they bear the responsibility for managing an emergency but are not given the appropriate legislative tools to strengthen their response capacity.

During the SARS outbreak of 2003, many instructions came from the provincial government, such as quarantine orders, screening systems, closure of some institutions and reallocation of resources. In all of these orders, it was always left to municipal governments, and in particular to the health units and emergency responders, to determine—

The Chair: Mr. Normand, sorry to interrupt. If I can get you to just—

Mr. Normand: Back up a bit?

The Chair: Please. You're distorting your voice. It's not coming out clearly. Sorry for the interruption.

Mr. Normand: Not a problem.

The Chair: You may continue.

Mr. Normand: During the SARS outbreak of 2003, we received many instructions from the provincial government, such as quarantine orders, screening systems, closures of some institutions and reallocation of resources. In all of these orders, it was always left to the municipal governments, and in particular to the health units and emergency responders, to determine the best way to enforce such orders. No provisions were made to support these, and on a great number of occasions, emergency managers had to turn to volunteer organizations for help.

During the blackout of the same year, the province once again declared an emergency and gave orders for people to stay home, to refrain from using transit systems and to reduce electricity consumption. These orders were given very quickly, in a reactionary mode, without even discussing provisions with local authorities and municipal emergency managers. In particular, the order that all non-essential employees refrain from going to work caused a multitude of backlash and problems since there was no appropriate definition of who was an essential employee. Some people considered essential by their employers stayed home because they did not feel they were essential, while many assumed that they were just as important as anyone else and came to work notwithstanding the order. Municipalities were left with the mess and had to scramble on many occasions to reinstate a semblance of order in the chaos caused by the province.

I want to add that not only is this bill light on responsibility for enforcement, it is also light on financial responsibility. The wording of the bill is very unclear on this and, based on experience, we have very little confidence that municipalities will ever see any funding for any emergency initiatives taken through a provincial order. In particular, subsection 13.1(2) states:

“The Lieutenant Governor in Council may by order authorize the payment of the cost of providing any assistance that arises under this act or as the result of an emergency out of funds appropriated by the assembly.”

Since most of the expenses incurred during an emergency rest at the municipal level, we would expect that a provincial order would also include full reimbursement of all such expenses, but the act only suggests that the Lieutenant Governor in Council may—not shall—authorize payment and only when it is seen as assistance. The act nowhere speaks to losses caused by decisions of government, such as payment of employees' salaries while they are under order to remain at home, loss of revenue of programs forced to close by provincial orders or loss of revenues caused by travel restrictions such as transit closures. It is even uncertain that the costs of evacuations, construction, destruction, removal or disposal of property, as detailed in the act, will ever be reimbursed to municipal governments.

If we base ourselves on the SARS experience again, the only costs reimbursed were those directly attributed to the health care of the people affected. All the costs related to prevention measures and the impact of closures, including loss of revenue, were disallowed. As for the blackout, we have given up hope of ever seeing a penny for any of the impacts of the decisions made by the provincial government.

When municipalities declare an emergency, they understand that they have to absorb the expenses that come with such a declaration. There are provisions for some support of municipalities through the Ontario disaster relief assistance program, but this comes with conditions that the municipality does fundraising locally in order to receive any kind of support. The same responsibility should apply when the province makes the

declaration. Whoever gives the order pays the bills: authority and responsibility.

We are also concerned that the bill provides the Premier with powers to unilaterally make decisions without consultation with the affected municipalities. We understand that in some instances decisions must be made quickly. However, in Ontario, every municipality is now mandated to have an emergency plan, to designate a community emergency management coordinator and to have the appropriate tools, training and exercises to respond to emergencies. I'm very glad to report to this committee that all municipalities in Ontario have now complied with this legislation. This implies that there is already a force of professionals ready to coordinate appropriate measures in every municipality. These professionals now run the risk of having the Premier come into their municipality to basically take over the emergency response, regardless of existing provisions and extenuating circumstances.

We contend that the people who understand the circumstances the best are those at the local level, not the Premier. These people now run the risk of seeing the province force them to take actions that are contrary to their best judgment, and of being fined or jailed if they refuse to comply. Emergency management in Thunder Bay or Moosonee is different from emergency management in Toronto or Ottawa. The people who understand this most are the people on the front line, not the provincial government.

One of the strengths of the Canadian system of emergency management is that the responsibility for emergency management starts with the individual and then moves to the municipality, to the province and finally to the federal government. No later than Monday of this week, the Ministry of Community Safety and Correctional Services reiterated this in a press release that was sent out to promote Emergency Preparedness Week, which by the way is this week, throughout the province. This system has proven to work time and time again. The Canadian approach to emergency management must be maintained. This bill ignores the possibility of making use of existing plans and programs at the local level and providing support to those in a provincially declared emergency.

With this bill, the Premier potentially obtains the right to order a municipality to send all its resources to the aid of another municipality without the possibility of refusal, thereby leaving it vulnerable. The bill needs to include provisions for justified refusal by municipalities to comply with parts of an order from the province when it is considered detrimental to that municipality.

Finally, we contend that this bill, although generally warranted, should go far beyond its reach in establishing a balanced approach to provincial emergency management, where municipalities are an equal partner in the planning and implementation of every emergency measure in their jurisdiction, regardless of who makes the declaration.

Responsibility for managing an emergency through all its phases lies inherently with the municipalities and, as

such, municipalities need the appropriate tools to fulfill that responsibility effectively, efficiently and rapidly. In order to ensure the safety and well-being of our citizens and the community, the province should confer the ability to issue orders to municipal authorities. In particular, the ability of municipalities to enact orders around restricting travel, evacuation, closure of facilities in the impacted area and procurement of goods, services and resources is integral to ensure a rapid, effective and efficient response. Municipalities will not have the luxury of time to wait for orders to be issued by the province when lives are at stake.

We see this bill as a reaction to a perceived threat of a pandemic and the consequences of gaps demonstrated in the SARS and blackout emergencies, but it was developed without the balance that is required for such grave decisions. We want to see changes made to this bill that will provide a better balance between authority and responsibility, and between provincial powers and municipal powers. We count on this committee to re-establish this missing balance.

As the representative of a force of over 450 emergency management professionals in the province, I offer my support and that of the Ontario Association of Emergency Managers to help in rewriting any part of this legislation and to consult with this government in any way possible to make Ontario safer and better prepared.

Thank you, Mr. Chairman, for providing us with an occasion to present our concerns. I'm ready to entertain questions if there are any.

The Chair: Thank you for your presentation. There are about three minutes for each side. Could I have the government side start?

Mr. Balkissoon: Mr. Normand, let me thank you for taking the opportunity to be here and present to us. You've stated, and I agree with you, that municipalities are best prepared to take care of emergencies within their municipalities.

Mr. Normand: Absolutely.

Mr. Balkissoon: But if you have a situation where an emergency starts in one municipality and spreads beyond the boundaries of that municipality, do you see it as appropriate that the Ontario government emergency management process take over?

Mr. Normand: Not necessarily. We think that each municipality can take care of its own jurisdiction. Where we see the need for the province is to come in and support the local emergency managers, providing additional resources beyond what the municipalities are already doing. We don't see the Premier coming into those municipalities and taking over, or EMO or whomever.

1100

Mr. Balkissoon: I'm not looking at it that way. Somebody has to coordinate between the two municipalities and have oversight.

Mr. Normand: During the ice storm, there was a lot of coordination that was done and we had a lot of help from the province, but never did we declare an emergency, although a very widespread area of the province

was affected. We don't see that there's a need for a declaration; we see a need for help and coordination at the provincial level. The declaration should come from the municipal level. If we're changing that system, then we're going to a completely different system than what Canadians have been used to, where municipalities have the main responsibility and the bulk of the authority, and if they need support, then they go to the province and the federal government in stages.

Mr. Balkissoon: In the future, it's pretty hard to predict the next emergency, isn't that so?

Mr. Normand: It is, although we have some ideas of what's coming now.

Mr. Balkissoon: So wouldn't you agree that previous legislation did not provide for cabinet to consider reimbursement to municipalities, and that this government is doing the right thing by putting into this piece of legislation that there is an opportunity for cabinet, where it says that it "may" consider authorizing payments to municipalities in terms of emergencies, which gives you a better opportunity today than existed in the past? Wouldn't you agree with that?

Mr. Normand: When I see "shall reimburse," then I'll be confident. As long as it's "may"—we've heard so many "mays" in the past, and we've never had anything come. We're still waiting for money from the blackout. We were told, "Oh, yes, we'll do our part." We haven't seen anything. SARS—we haven't seen anything. So no, I don't believe in "may." Sorry.

The Chair: Mr. Dunlop.

Mr. Dunlop: Thank you for being here and representing the 450 people who are part of your organization. I just want to put on the record that the ice storm did have a compensation package. There was money that flowed, just so you're aware of that.

Mr. Normand: True.

Mr. Dunlop: I think you make a good point on whether or not the Premier should come in and do a photo op when making this special announcement, when you probably already know what you're doing. You probably don't need him there.

The question I want to ask, and what I'm very concerned about, is how municipalities are compensated after. We've seen a huge discrepancy right here in this term of government; for example, the flood in Peterborough. Millions of dollars flowed to Peterborough, in two separate announcements, I think, yet we had tornadoes in other areas. A fairly substantial tornado hit Wellington county, and they got peanuts. It was at the discretion of cabinet.

Can you see a standard formula being put in place, so that when these emergencies are declared, whether the Premier declares them or whether an emergency manager or the mayor of a municipality declares them—can you see a standard formula being part of a process that would actually be a part of this bill, so if there was an emergency, such as a flood or a train derailment or whatever, those municipalities would actually see some assistance and be guaranteed that assistance?

Mr. Normand: Right now, the only system we have is the Ontario disaster relief assistance program. There are a lot of criteria that have to be met to be able to benefit from that. Not only that, but those are geared towards the people in communities that have been affected by the emergency: people who have lost their houses or lost goods in their houses, things like that. The municipal governments are not eligible under those provisions. We get possibly a few little things here and there if we can justify that the municipality itself has lost any resources, any facilities, but the money that we spend on overtime and on equipment and supplies to deal with the emergency is not covered anywhere. That's left to the whim of the government of the time.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, sir. I noticed that a journalist has just come into the committee room. That'll escalate the levels of rhetoric and hyperbole.

Taking a look at the act that's being amended, in particular section 4, which gives the head of council of a municipality the power to declare an emergency, which you're well familiar with, and similarly to "make such orders as he or she considers necessary and ... not contrary to law," is a pretty broad scope, isn't it?

Mr. Normand: It's fairly broad.

Mr. Kormos: And I'm not going to say it shouldn't be. It allows for creativity, because it doesn't delineate or specify.

Mr. Normand: Exactly.

Mr. Kormos: That's why I'm concerned about the new section 7.0.2 in the amendments, which talks about the orders that can be made. You understand where I'm coming from with this? Rather than relying upon the common-law powers—as you might have heard me say earlier, police shut down roadways in Ontario for any number of reasons. They shut one down because there was a film shoot last Sunday along the Lakeshore. The Lakeshore was shut down for a day. So police already have the power to shut down a highway, huh?

Mr. Normand: Yes, they do.

Mr. Kormos: Airport officials already have the power to shut down an airport. It happens from time to time for any number of reasons, to everybody's annoyance.

I am concerned about the amendments which provide specificity and may well then restrict the power of the province, and the impact they will have on the section 4 powers of heads of municipalities, who are in a far better position to respond more quickly than here at Queen's Park.

Let's face it: There are two Ontarios. There's the intersection of Yonge and Bloor and then there's the rest of Ontario. That's what you were referring to with your Moosonee-Toronto comparison. I come from small-town Ontario. So do some of these folks. Do you share some of my concerns about the failure to address section 4, when you have all these other amendments with the provincial powers seeming to override all others?

Mr. Normand: This is exactly our concern. We have the concern that the Premier or even the commissioner of

public safety will come in and take over and make orders that are beyond what the head of council can ever do and really jeopardize our emergency planning, our emergency response programs.

If you go back to the example of travel, we're not concerned that much with the closure of highways. We're concerned, for example, that the Premier is going to tell us that our buses aren't running anymore, because that's what it really is: The travel restriction is to say that people can't go anywhere out of certain boundaries. It's not just closing the highways. It's saying, "Your buses are staying put." Well, that's a loss of revenue for us to start with. It's also very problematic, because that means more traffic on the side roads, particularly if the highways are closed. So there is more risk of accidents, more lives at stake.

These are the kinds of decisions that we think the Premier can't just make as a reaction. It needs to be discussed. It needs to be balanced between what the municipalities can do to curtail particular emergencies and what the province can do to support us in those decisions. That's what we need.

Right now, we do have the possibility of declaring an evacuation, but if a person refuses to be evacuated, we have absolutely no power to take that person out. If something happens, then we have to send our firefighters to go and get that person out. We're putting our firefighters at risk because we have no power to be able to force these people to evacuate.

Mr. Kormos: Thank you for your interesting observations.

The Chair: Thank you, Mr. Normand, for your presentation.

CANADIAN BLOOD SERVICES

The Chair: The next presenters are from Canadian Blood Services. Good morning. Can I get your names for Hansard, please?

Mr. Ian Mumford: Good morning to you and to members of the committee. My name is Ian Mumford, and I am the chief operating officer of Canadian Blood Services. I'm joined today by Dr. Peter Lesley, who's the medical director for our Ottawa site, and Ayanna Ferdinand, who is one of our in-house legal counsel.

The Chair: Thank you very much. You may begin.

Mr. Mumford: We're here this morning with respect to the application of Bill 56 on Canadian Blood Services as Canada's national blood operator. I would like to stress at the outset that Canadian Blood Services firmly believes in taking a proactive approach to emergency planning. We believe in the importance of protecting the health, safety and welfare of Ontarians and Canadians in the event of an emergency. In fact, Canadian Blood Services is in the midst of our own pandemic influenza planning, as we are mandated with delivering vital blood and blood products to hospitals across the country.

We're here today to express our concern that Bill 56, if enacted as presently drafted, has the potential to divert

our professional staff away from the operating of the national blood system. Our view is that in the event of an emergency situation such as contemplated in Bill 56, our staff, including nurses and physicians, will be expected to play a vital role in sustaining Ontario's and other provincial health systems.

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I'd like to tell you a little bit about Canadian Blood Services. Canadian Blood Services, or CBS, as we call ourselves, is Canada's national integrated blood operator. CBS is a unique provider of health care services in Canada. It is the only provincially funded provider of a vitally necessary health care service that operates on a national basis within 12 provincial and territorial jurisdictions, excluding Quebec. We are an integral part of the health system, which, in part, Bill 56 aims to protect. For instance, red blood cells are necessary to address acute blood loss during trauma or major surgery, and platelets are used in the treatment of cancer.

In the wake of the Krever commission, the mandate provided to CBS is to be responsible for the national blood supply system that ensures Canadians access to a safe, secure and affordable supply of blood, blood products and their alternatives. CBS is responsible for: recruiting and managing blood donors; whole blood, plasma and platelet collection, processing, testing, storage and distribution; and inventory management of these products.

The provincial and territorial Ministers of Health, including the Minister of Health here in Ontario, appoint our board of directors, approve our corporate plans and provide our annual budgets. CBS operations are, however, regulated by the federal government through Health Canada.

I would now like to explain a little of what we do as a blood operator, to give you an appreciation of the interaction of this proposed legislation on our processes and staff. We collect, on an annual basis, approximately 870,000 units of whole blood at 42 locations across the country, and as many of you know, we hold about 14,000 blood donor clinics each year across Canada. CBS ships blood products to nearly 750 hospitals across the country. Nearly 50% of blood collections in this country are obtained here in the province of Ontario.

CBS relies on our professional staff, our volunteers, our blood donors and our facilities to operate and manage the national blood supply. Currently across Canada, we employ some 60 physicians, almost 600 registered nurses and almost 500 medical laboratory technologists. Here in Ontario we have just over 300 registered nurses, about 20 physicians and 150 medical laboratory technologists, on whom we greatly depend.

Our medical and technical staff perform a range of critical functions essential to delivering on our mandate to ensure the safety and adequacy of the nation's blood supply. Given the highly regulated nature of our business, many of the critical functions must be performed by doctors, nurses or technologists. For example, a nurse can only perform eligibility assessment of donors, a phy-

sician can only perform review of donor health status and a technologist can only perform certain steps in the production process. For specific functions, only those people who have the required qualifications can perform the work. As I mentioned previously, we are highly regulated by Health Canada and are therefore not permitted to substitute other staff or volunteers to perform those duties.

CBS has made planning for a pandemic influenza a priority. We have determined that a pandemic would have a significant impact on the availability of blood and blood products, principally due to its impact on staff and donor availability. The breadth of authority given to cabinet with respect to emergency orders in Bill 56 greatly concerns us. Cabinet may have the authority to divert CBS's medical, nursing and technical professional staff and requisition facilities outside of CBS. Cabinet may also have the authority to prevent CBS from transporting vital blood and blood products to hospitals. We believe that Bill 56 directly impacts CBS's ability to ensure essential services and facilities to deliver on our mandate for a safe, secure and adequate blood supply. As noted previously, if CBS does not have adequate medical and professional staff to perform critical functions, we will not be able to maintain operations and deliver safe blood and blood products to Ontarians and Canadians.

In light of these concerns, we would respectfully request of the members of the committee an exemption from the orders in Bill 56 that affect our staff, facilities and ability to transport blood and blood products.

I would also like members of the committee to know that in addition to this presentation this morning, we have written directly to Minister Kwinter requesting the opportunity to work directly with ministry staff to ensure that application of Bill 56 meets the needs of Ontario in the event of a declared emergency while preserving CBS's ability to exercise its mandate as Canada's national blood operator.

We certainly support the purpose of this bill. The promotion of the public good can be achieved by protecting the health, safety and welfare of the people of Ontario in times of declared emergencies. Consistent with this purpose, CBS wants to find a solution where the functioning of the blood system is not unduly compromised, but also, where possible, it is supported by legislation so as to ensure the continuity of service that may be required by hospitals in Ontario and elsewhere across the country.

We appreciate the opportunity to meet with you this morning. The safety and supply of the blood system must be an integral part of emergency planning. We commend the government for proactively addressing emergency planning in legislation to ensure the protection and well-being of Ontarians. As a national blood operator, we would seek your consideration and support to ensure that Bill 56 will accommodate the unique aspects of Canadian Blood Services. Thank you very much.

The Chair: Thank you. There are about four minutes for each side. We'll start with the official opposition.

Mr. Dunlop: Thank you for being here this morning, but more importantly, thank you for the work you do across Canada. I can tell you, I see the blood donor clinics in all areas of my riding. They're very well received, and I know it's such a worthy cause.

I'm curious: You're asking for a straight exemption from the bill. Can you support the bill without that exemption?

Mr. Mumford: The short answer would be no, we cannot. Perhaps I could ask my colleague, Ms. Ferdinand, to elaborate a little on some of the very specific—

Mr. Dunlop: I'd really like to know that. Yes, thank you.

Ms. Ayanna Ferdinand: Certainly as drafted, we couldn't support the bill. Specifically, subsections 7.0.2(2), (5), (6) and sections 7.0.10 and 7.0.12 refer to orders that are very vast in their breadth and in their application to CBS. Those sections refer to the procurement of property, to the use of services, to the shutting down of facilities. As Ian mentioned earlier, that would certainly directly affect our ability to provide blood and blood products during an emergency.

Mr. Dunlop: That's the only question I had.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you for again another interesting perspective on the bill. Obviously, there would be concern from the point of view of, let's say, the proverbial floodgates. If there's a specific exemption for Canadian Blood Services, then who is going to be next to ask for the exemption?

The government says that there's no power in the bill to press people into service. I heard what was said earlier today by the bureaucrats who gave us a breakdown of the bill. But you seem to be suggesting that your people could be pressed into service.

Mr. Mumford: That is our concern—one of our principal concerns—and that is based on our current reading of the bill. As I indicated, we are also very willing to work with ministry staff, to work with the committee, to maybe work together to find a solution to this. Our sense is that one of the principles behind the legislation is to protect the integrity of the health care system in Ontario; that's one part of many aspects of this. Our sense is that when the bill was drafted, there perhaps had not been consideration given to the impact it would have on us as an integral part of the health care system in this province.

Yes, we are concerned about the impact on staff. In our scenarios that we have developed, like every other organizations, including, I'm sure, most of the government agencies, we have made estimates on how many of our staff will be sick or unable to come in to work because they're caring for a family member or whoever. When you factor that in, and then layer on top of that the possibility that our folks could be plucked away to go and work at a hospital where they certainly could be needed, it would basically shut down the system in Ontario, and therefore would have a huge impact on the system across the country.

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Mr. Kormos: Your colleague refers specifically to paragraphs 5, 6, 10 and 12 of subsection (4) of the new section 7.0.2. I call that the steroid section of the bill, because really that's the one that's got the panache to it, the "We'll make these orders, and these orders and these orders." You heard from health workers via OPSEU earlier today expressing concerns. You heard from management of emergency services. This isn't just about this steroid section. It's not as simple as simply saying, "Let's use extraordinary powers to make orders." That's what you're saying.

Mr. Mumford: That's right.

The Chair: The government side: Mr. Balkissoon.

Mr. Balkissoon: Thank you for taking the time to be here. On behalf of the government, thank you for the work you do in our province and across the country.

I just want to get the actual clause numbers that were mentioned. You went through them very quickly.

Ms. Ferdinand: I'll repeat those. It's under the emergency powers and orders section, 7.0.2, paragraphs 2, 5, 6, 10 and 12.

Mr. Balkissoon: Just for clarification, you believe these sections would put your employees in a position where this bill will allow the Premier to actually conscript your employees. Is that what you're concerned about?

Mr. Mumford: That is our concern, sir; it's our people and our facilities.

Mr. Balkissoon: Okay. You mention that the only recommendation you would make—your organization is looking to be exempted from this bill. Is that the only thing you've seen possible?

Mr. Mumford: That was the proposal we wanted to lay before you. That was sort of our best thinking. If, however, there is another solution that we can work on with the committee or with ministry staff in terms of amendments to the legislation, we'd be very happy to consider that.

Mr. Balkissoon: I think you also stated that you've communicated all of this to Minister Kwinter.

Mr. Mumford: Yes, we have.

Mr. Balkissoon: Thank you very much, and thanks for being here.

Ms. Ferdinand: I would just like to add that an alternative to the exemption would be a clarification in the bill that specifically states that the authorization does not mean forcing or does not mean requiring that staff fulfill these purposes that are listed in the bill, and that it won't affect our facilities. We'd want a specific clarification on that.

Mr. Balkissoon: So it's strictly your staff?

Ms. Ferdinand: No. As Ian mentioned, it's not strictly our staff; it's our facilities and also our ability to transport blood and blood products.

Mr. Balkissoon: Okay, thank you very much.

Mr. Kormos: Chair, a request to legislative research, please: "Procurement of necessary goods, services and resources" and "services and resources" would be the

language of concern. I'm wondering if Mr. Fenson could help us with some Black's Law Dictionary type of interpretations of "goods and services" insofar as they might permit the pressing of people into service, and alternative language that would make it clear that it doesn't mean that.

Mr. Avrum Fenson: Thank you.

ONTARIO SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

The Chair: The next presentation is from the Ontario Society for the Prevention of Cruelty to Animals. Good morning, gentlemen.

Mr. Michael Draper: Good morning. My name is Michael Draper. I'm the chief inspector of the Ontario Society for the Prevention of Cruelty to Animals. Beside me is Hugh Coghill, a senior inspector with the Ontario SPCA.

First, I want to give you an introduction to the Ontario SPCA. We're a provincial charitable organization, formed in 1873. We have a legislative mandate here in Ontario to investigate animal cruelty. The Ontario SPCA is a non-profit charitable organization responsible for protecting all animals in Ontario. We operate through a series of 27 branches and 31 affiliated humane societies. Our shelters shelter tens of thousands of abused and neglected animals each year in Ontario. We're mandated under the Ontario Society for the Prevention of Cruelty to Animals Act to enforce animal cruelty laws. We have police powers to do so and were also named to enforce the Dog Owners' Liability Act recently. We are currently involved in the evacuation of animals in Kashechewan.

The Chair: Mr. Draper, can I get you to back away from the mike? We're having some problems with your voice.

Mr. Draper: My apologies.

The Chair: That's better. You may continue.

Mr. Draper: What I want to talk to you about today is emergency planning for animals. It's the right thing to do. We and municipalities in the province plan for all sorts of emergencies. Those emergency plans need to include planning for evacuation or contingencies for animals. It seems to have been an oversight for a number of years not to plan for this.

When animals were not considered in the plan, many unforeseen circumstances have shown themselves. For example, many people are unwilling to leave their homes, even if there is an evacuation order, because they don't want to leave their pets. There are also a number of animal welfare issues. When animals are left behind, lack of food and water creates great suffering. In Kashechewan, animals were left as an afterthought. The people were evacuated and they thought, "Oh, what are we going to do with the animals afterwards?" Lack of a plan meant a lot of bureaucratic problems around whose responsibility it was and how this evacuation was going to take place. There was no plan to house the animals

with the citizens and no plan to house the animals if they were evacuated.

Having a plan helps us and helps the government facilitate coordination between all levels of government and really makes a lot of sense. In Katrina, the largest disaster in the United States, there was no plan to evacuate animals. Because of that, a lot of people remained in their homes when they shouldn't have, and people perished. It was very unfortunate. A lot of senior citizens remained with their pets and died, quite honestly. Because of that, the American Association of Retired Persons wants animal evacuations included as part of plans, and the city of New Orleans has now instituted a new plan that includes animal evacuations.

What I'm recommending today and what I'm asking the committee to consider is having animals included in an emergency plan. There should be an emergency plan to facilitate the safe evacuation or care of animals. What we're proposing is a new recommendation to be added to the bill as an amendment, and I have included it on the third page of my presentation. It's simply a very small change in the wording of subsection 9(b) of the current Emergency Management Act to specify that there will be procedures taken not only for the safety or evacuation of persons in an emergency area, but also animals. This makes sense. This amendment is very simple and will ensure there's a coordinated approach at both the municipal and the provincial levels, and that animals are better protected here in Ontario.

We ask the committee to support this small recommendation by presenting and supporting this proposed amendment at clause-by-clause consideration. Thank you very much.

1130

The Chair: Thank you. That leaves about five minutes for each side. Mr. Kormos.

Mr. Kormos: Welcome back. Mr. Draper, you're spending a lot of time here. You've got a better attendance record than Gerard Kennedy.

You add an interesting insight to the whole issue, and one which of course doesn't deal necessarily with the amendments but deals with the root act. Before people take this lightly, it's not just Fluffy the cat. Down where I come from, it's cattle, horses—there's a big horse farming community up around Georgetown and so on because we're near racetracks, amongst other things—poultry. So you're talking about big operations; you're not just talking about people's pets in their home.

Mr. Draper: No, we're not. There's the consideration for people's livelihoods: livestock—you're right—race-horses, facilities that provide research, veterinary hospitals, the University of Guelph. All those issues need to be considered. That's right.

Mr. Kormos: Obviously, to abandon a big poultry farm or a stable operation with the potential for the deaths and then the subsequent decay of the bodies, you're aggravating a dangerous health situation in any event, huh?

Mr. Draper: That's right. There are a number of consequences to not having animals included in emergency planning: animal suffering, the huge loss of income to farmers. There's a lot of issues. Although there's some planning involved at the provincial level related to farm animals, requiring municipalities and the province to include all animals in an emergency plan would resolve a lot of current problems that it's no one's responsibility to plan for animals.

Mr. Kormos: It's unfortunate, because Mr. Normand, who was here earlier from the Ontario Association of Emergency Managers, might have been able to speak to this. Have some or any or all of the municipalities, especially those in rural areas like where I come from, talked about this issue in terms of their municipal plans?

Mr. Draper: My understanding is no. The only one we're currently aware of that is talking about it is the city of Toronto. Senior Inspector Coghill has been involved in that, and that's only at the preliminary phase.

Mr. Kormos: Maybe you can help us with that.

Mr. Hugh Coghill: Sure. We're not aware of other municipalities that are doing this across the province. As Mr. Draper said, we have been involved with the city of Toronto in their very early stages, at that planning level.

The Ontario SPCA was involved with the Mississauga train derailment to a great degree. A lot of people left their animals behind in their homes and were very, very concerned about that. There was no plan, no provincial plan, available to deal with that, so we sort of did it on an ad hoc basis.

More recently, for me, I worked for a few years in British Columbia. I was in BC during the time of the fires in the interior. A great many people refused to evacuate because of their animals. They didn't want to leave their animals behind. There were plenty of people who saw that their children and other family members were evacuated but refused to leave until their pet goat was going with them or their flock of chickens or their cattle or whatever other animals. We also, surprisingly, became very aware of some rather interesting exotic animals that people were keeping in their homes that nobody seemed to be aware of until then and then; we had to evacuate those and make special arrangements for that.

So we feel strongly that there needs to be some provincial ability to address this particular issue.

Mr. Kormos: Have Metro Zoo and other municipal zoos addressed this issue?

Mr. Coghill: I can speak to that. Most of those larger facilities do have an evacuation program and a protocol in place in the event that there is a disaster and they have to move their animals. Most of the larger facilities do, but a lot of the smaller ones simply don't have anything; there's nothing planned.

Mr. Kormos: Your amendment would simply add "and animals." How would you refine that so it didn't include, with all due respect to raccoons—oh, I hate those things.

Interjection.

Mr. Kormos: Well, I'm sorry. Raccoons are not my favourite. How do we word it so you don't include the raccoons that are burrowing into the attics of our 100-year-old homes in small-town Ontario?

Mr. Draper: We're looking at animals in captivity or animals that are domesticated, normally. We're not talking about collecting all the squirrels and evacuating them. They're smarter than we are. They know when to leave, of course.

Mr. Kormos: But give us the language. What's the language we would use?

Mr. Draper: "Animals in captivity," probably.

Mr. Kormos: Okay. Thank you.

The Chair: The government side.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you for your presentation. You mentioned farm animals and farm organizations, the commodity groups that have already been working on these types of endeavours. Can you describe for us your involvement with farm organizations in terms of developing plans?

Mr. Draper: We do have some work going on with poultry groups related to issues of avian influenza and those issues. That relates more to disease and animal health issues: if we have a disease outbreak of avian influenza, or of foot-and-mouth disease, which we've been involved in. But a lot of discussion hasn't taken place related to if it's just an emergency, if it's an evacuation versus a foreign animal disease entering the province. There's been a lot of work at OMAFRA; we've been involved, and the commodity organizations. They've done a tremendous job, and there have been resources to that. But issues outside foreign animal disease haven't been considered as much. If it's simply an evacuation because of a forest fire or things like that, those items haven't been considered.

Mrs. Van Bommel: Have you, as an organization, given consideration to how that would work?

Mr. Draper: How evacuations would work?

Mrs. Van Bommel: Of large numbers of large animals, like on a farm.

Mr. Draper: Farm animals are a very difficult issue to deal with. Some animals on a farm can be evacuated very quickly, such as cattle, versus poultry. It may not be practical, and there has to be consideration for a farmer, for example, to determine if humane euthanasia is a better course than evacuation, and those protocols. Some of those are being developed because of concerns related to disease control.

Mrs. Van Bommel: But you would consider, as you say, because of the difficulty of transporting some of these animals, that euthanasia may be the more humane alternative?

Mr. Draper: That's right. We're simply saying there needs to be a plan. There are different options in that plan for what to do—evacuation, humane euthanasia of large flocks of birds—but there needs to be a plan, not just a made-up plan three days after the emergency takes place.

The Chair: Mr. Dunlop.

Mr. Dunlop: Thank you very much for being here. I've got a series of short questions, more than anything. It's my understanding that your organization has been called on a lot more in recent years to provide your services. Is that not correct?

Mr. Draper: Yes, it has. We've been involved in Kashechewan a number of times, due to the evacuation of people there, and in a number of different crises similar to that.

Mr. Dunlop: Can you tell me how much money you are funded by the province of Ontario?

Mr. Draper: We receive \$119,000 annually from the Ministry of Community Safety and Correctional Services.

Mr. Dunlop: So you didn't get any of that windfall money at the end of March, when municipalities without roads and bridges got money for roads and bridges? You didn't get any of that windfall?

Mr. Draper: No, we didn't.

Mr. Dunlop: Okay. But in the Grant Thornton report, I'm quite sure I read that there were recommendations to actually supply more funding to the OSPCA.

Mr. Draper: That's correct.

Mr. Dunlop: And you have received none of it so far?

Mr. Draper: That's correct.

Mr. Kormos: You're partisan.

Mr. Dunlop: Well, I'm sorry.

Mr. Kormos: Don't apologize.

Mr. Dunlop: I happen to think, Mr. Chair, that the OSPCA brings some very valid points here. We've seen the outcry with the pit bull legislation across this province, and I think that if the average person in Ontario, particularly pet owners, realized that pets or animals in captivity weren't included in this plan, I think they would actually like to see that input or see a separate bill or whatever it may be. But my understanding is that they would like to see pets included in an emergency disaster plan.

Mr. Draper: Absolutely. I think there would be a tremendous outcry if you tried to evacuate a city and left all the animals behind or did something similar to that. There would be a tremendous outcry of citizens of Ontario. Seventy per cent of the people of Ontario own a pet, and most of those people love their animals dearly.

Mr. Dunlop: I'm not sure how much time we're allowing for clause-by-clause, but as we go through this meeting this morning, I can tell you that I'm hearing a lot of recommendations being made on this piece of legislation, so I hope the government members are planning quite a bit of extra time for clause-by-clause and for third reading debate as well, because these are the types of things that I think are important to a good emergency plan. I would never have thought about the OSPCA until I saw your proposal. On top of that, I have been watching these Katrina disaster problems on CNN, and there is no question that that was a huge issue down there.

I compliment you for coming forward with this. I wish we could do more for you. I don't think the OSPCA should be surviving on bake sales and fundraising galas. I

think there should be a responsibility for the provincial government to be part of this as well. Thank you very much.

1140

The Chair: Any comments?

Mr. Draper: Just related to Katrina, it was such a problem down there because there was no plan. We need to have a plan. Everybody flooded in to that system to try to help the animals, and there was no organization. People were injured and almost killed because a lot of good Samaritans tried to intervene, because there was no state plan and we had everybody from across North America going there.

If there was a plan, it would be orderly and very beneficial to the community in reducing injuries and saving a lot of lives as well. Seniors lost their lives not leaving their pets behind.

The Chair: Thank you.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 444

The Chair: The next presentation is from the Ontario Public Service Employees Union, Local 444, Kingston General Hospital. Good morning.

Mr. Brendan Kilcline: Good morning, if it still is; I'm not sure.

I'm Brendan Kilcline. I'm from Kingston General Hospital, where I'm a lab assistant. I'm also with the Ontario Public Service Employees Union hospital professionals division. Our division of OPSEU represents a broad range of diagnostic, therapeutic and technical professionals who are a vital part of the multidisciplinary health care team. We have a number of concerns regarding emergency management and Bill 56.

Firstly, the definitions and powers in the act regarding the medical services our members provide are very broad, and the powers to procure, distribute and fix the price of such services may be interpreted to give powers that essentially amount to the conscription of civilian health care workers. Such conscription could be under duress of the grave penalties of the bill. We believe that such power is extreme in a democracy and is also unnecessary. In all true emergencies, health care workers have a proud history of rising to the occasion to protect their communities, even at great personal risk. There is no basis to believe they would not voluntarily do so again. If it is not the intent of the bill to envision the conscription of health care workers, we urge you to make it clear within the bill.

During the SARS crisis, it was the uncertainty of the obligations of the parties that contributed in large part to the chaotic nature of the response. Since then, many of our collective agreements have negotiated provisions for emergency situations. The central agreement reached with many Ontario hospitals has just such a provision. That's article 30 of the central agreement, and it's in our presentation.

Agreement on issues such as training, deployment, scheduling, pay rates and accommodation of health care workers with particular needs is vital to the operation of a facility in an emergency. These issues and the framework for dealing with them are best resolved by the workplace parties in advance of an emergency and with the full consultation and participation of the workplace parties throughout an emergency. The legislation should support this process. A provision that emergency orders take full account of these agreements between the workplace parties to the fullest extent possible should be included in the bill. We are the local parties, and locally negotiated agreements are the most effective.

Occupational health and safety: While the Occupational Health and Safety Act is not eroded by the bill, we are concerned that the act itself will not give sufficient protection to health care workers during an emergency. Indeed, this was our experience during SARS. Health care workers have only a limited right to refuse, and it is in an emergency that these workers will most likely be encountering those limits. It is precisely because of this that the role of both the internal responsibility system and the activity of the Ministry of Labour in enforcing the Occupational Health and Safety Act must be enhanced during an emergency. The recent outbreak of legionnaires' disease at a Toronto facility is a case in point. Workers there were given conflicting directions as to the type of respiratory protection required. It must be made clear that the Ministry of Labour determines what constitutes compliance with the requirement to take all reasonable precautions for the protection of workers under the act, and not other ministries or agencies.

To facilitate the protection of workers with limited rights of refusal, the involvement of the workplace joint health and safety committees and the Ministry of Labour needs to be expanded in an emergency. These committees provide critical forums for addressing worker concerns and the measures taken in preparation for emergencies. The involvement of the joint committees is also crucial for monitoring the application of such safety measures and in monitoring the effectiveness of the facilities' health and safety program. However, these committees are only required to meet as little as once every three months.

When an emergency is declared, there should be a requirement to cause the joint health and safety committees to meet immediately to consider the emergency and to meet regularly throughout the emergency. In particular, if emergency orders are issued that may impact on the health and safety of workers, the committee should be required to consider such orders immediately. Such orders should be immediately sent to the director of occupational health and safety at the Ministry of Labour for immediate and urgent review. The Ministry of Labour should also be sent, and promptly review, any recommendation made by a joint committee with respect to the order.

The indemnity for employees acting under the order within the bill: As well as common law requirements for duties of care, many of our members are regulated under

the Regulated Health Professions Act by colleges which have standards and scopes of practice. The bill offers some protection against liability for our members' good-faith actions undertaken in an emergency, but those protections need to be expanded. The cost of defending those good-faith actions in litigation can be ruinous. We note that police officers have protection from the costs of these actions under the Police Services Act, and our members deserve no less consideration, particularly when operating in an emergency.

While some protection is offered in the bill for workers temporarily reassigned during an emergency, the protections are not fully adequate. The bill should contain a provision guaranteeing that the worker returns to their pre-emergency position. After an emergency, it's highly likely that many health care workers will be exhausted and many will have to attend to family matters that are put on hold during an emergency. The employment protections provided to such workers should not end with the emergency but be extended to some reasonable time thereafter.

These powers are particularly important, especially in light of the ability to deem health care workers qualified in areas other than those in which they have been traditionally working.

The Chair: Thank you. We have about four minutes for each side. Mr. Balkissoon.

Mr. Balkissoon: Mr. Kilcline, thank you very much for taking the time to be here with us and giving us your input.

I just want to pursue your comment that if the bill does not say "conscription," it should be clear. Nowhere in the bill is there conscription. If you're concerned about clause 12, would you agree that the government needs the authority, the power, in case of a provincial emergency declaration, to allow professionals or volunteers from outside the province to volunteer their services if they're qualified to do so? That's what clause 12 is doing. If I was to say that to you, would you be much more comfortable?

Mr. Kilcline: That would make us more comfortable.

Mr. Balkissoon: That's the intent of 12.

Mr. Kilcline: We would like the intent to be clear and unambiguous.

1150

The Chair: Mrs. Elliott.

Mrs. Christine Elliott (Whitby-Ajax): Thank you for your presentation today. The question I have for you is with respect to the joint health and safety committees and their actual role in the course of an emergency. You indicated that if an emergency order were issued, they would need to be consulted and their recommendations would be sent to the Ministry of Labour. Do you see that as an advisory role more than anything else, just to be able to consult with the people who are going to be dealing with the emergency orders and just to have sort of a pipeline, I guess, to the Ministry of Labour to make sure the ministry knows what the concerns are?

Mr. Kilcline: Yes. We feel it, particularly vital in an area where our workers have limited rights of refusal that

consideration of the joint committees does get essentially a direct pipeline to the Ministry of Labour, especially where orders are written that may impact on occupational health and safety. We need that. We need the ability of the ministry to come and enforce in the environment that we have, where workers have limited protections and, just by the nature of their work, are inclined and willing to undertake these potentially dangerous assignments.

Mrs. Elliott: I gather from your presentation and one of the previous presentations that during the SARS crisis there was really a feeling that the front-line workers' concerns were not being addressed and that the people higher up in the chain really had not much of an idea of what they were actually dealing with on the front line. Is that fair to say?

Mr. Kilcline: That is correct. Already the joint health and safety committees do have those powers to recommend and advise. It's just that in an emergency, during the SARS crisis, they weren't in most cases given due consideration. They weren't used, and they could have been used very effectively to assist in the protection of workers. Again, that is vital in an area where workers have limited protections.

Mrs. Elliott: Thank you very much. Those are all my questions.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, Brother Kilcline, for joining us today. You make some interesting observations and express some serious concerns. I appreciate the parliamentary assistant drawing your attention to paragraph 12 of what is becoming increasingly notoriously known as what will be section 7.0.2 of the act should this bill pass. Paragraph 12, "the authorization of any person," has some issues around it as well, but let's take a look at paragraph 10, because your concern is conscription or pressing people into service.

What does paragraph 10 provide for? It provides for the procurement of goods. We all know what those are. Those are tangible things like gasoline and automobiles. It provides for the procurement of resources, which is pretty broad. Resources, once again, mean, in my view, physical things but can also mean staff, the resources of an institution, of a private or public company or organization. But it also talks about the procurement of services.

Mr. Kilcline: Particularly medical services.

Mr. Kormos: Yes. Services clearly aren't goods. This coffee cup isn't a service, it's a good, it's a thing. It could be a resource. But services are clearly things that people do, and you can't procure the service unless you procure the person, huh?

Mr. Kilcline: That is correct.

Mr. Kormos: This is where people are—and you're not the first person today, although I credit OPSEU with having peeled back enough here. You may not have been here first thing this morning, but there were bureaucrats from the ministry who insisted there were no powers of conscription or, as I used the phrase, powers to press people into service. But it looks like paragraph 10, the procurement of services, is very problematic for you and your colleagues.

Mr. Kilcline: We feel it could be interpreted thus. Again, if it is the clear intent not to do that by the government, we would like that clear intent in the bill.

Mr. Kormos: Just say so. Because when you then look at paragraph 12, which is authorizing people to do things that they wouldn't otherwise be authorized to do, there doesn't appear to be any power by the person being authorized to say, "No, I do not ethically believe I should be performing that particular procedure because I'm not adequately trained and it would put the recipient of the service or procedure at risk, or because I'm not adequately trained in protecting myself," from a health and safety perspective. Do you share my concern about paragraph 12 in that regard?

Mr. Kilcline: Absolutely. They are our concerns.

Mr. Kormos: Then you look at paragraph 14, which the government has conveniently not referred to because that's the omnibus paragraph. It's wide open: "such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary." It's the kitchen sink. It's anything and everything. So if there isn't conscription or pressing into service in paragraph 10, which I'm insistent that there is, there sure as heck is down in paragraph 14. This is a real dog's breakfast. It seems to me that the government should be sitting down with the front-line emergency responders like health care workers and health professionals rather than giving the provincial emergency czar, who is collecting two very attractive pensions already, more arbitrary powers.

Thank you very much for coming all the way from Kingston. Of course, you can make application to the Chair for travel expenses, and I invite you to do that because you've accommodated us by coming here.

Mr. Kilcline: Thank you very much.

The Chair: Thank you very much.

That concludes all of our presentations for today. This committee stands adjourned until Monday at 3:30. Could I have the subcommittee members remain behind for about five minutes. Thank you.

The committee adjourned at 1156.

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Official Report of Debates (Hansard)

Monday 15 May 2006

Journal des débats (Hansard)

Lundi 15 mai 2006

**Standing committee on
justice policy**

**Comité permanent
de la justice**

**Emergency Management
Statute Law
Amendment Act, 2006**

**Loi de 2006 modifiant des lois
en ce qui a trait à la gestion
des situations d'urgence**

Chair: Vic Dhillon
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STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Monday 15 May 2006

Lundi 15 mai 2006

*The committee met at 1632 in room 228.*EMERGENCY MANAGEMENT STATUTE
LAW AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À LA GESTION
DES SITUATIONS D'URGENCE

Consideration of Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997 / Projet de loi 56, Loi modifiant la Loi sur la gestion des situations d'urgence, la Loi de 2000 sur les normes d'emploi et la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail.

The Chair (Mr. Vic Dhillon): Good afternoon, everybody, for the second day of our meeting of the standing committee on justice policy. We're here today for Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000, and the Workplace Safety and Insurance Act, 1997.

POLICE ASSOCIATION OF ONTARIO

The Chair: Today, we'll hear firstly from Bruce Miller, who is with the Police Association of Ontario. Good afternoon, Mr. Miller. You have 20 minutes. I'm sure you're aware of the procedure. You may begin at any time.

Mr. Bruce Miller: Thanks very much, Mr. Chair. My name is Bruce Miller, and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years for the London Police Service prior to taking on my current responsibilities.

The Police Association of Ontario is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. The PAO is committed to promoting the interests of front-line police personnel, upholding the honour of the police profession, and elevating the standards of Ontario's police services. We have included further information on our organization in our brief.

We appreciate the opportunity to provide input into this important process. We would like to focus our atten-

tion on the importance of these proposed legislative changes to community safety.

As you know, the government's current emergency response powers and responsibilities are set out in the Emergency Management Act, but that act is designed primarily to ensure that appropriate municipal and provincial infrastructures are in place to deal with a local or provincial emergency. It helps to ensure that communities and provincial ministries have emergency programs and plans in place and that they are tested and updated on a regular basis.

The primary purpose of Bill 56 is to provide emergency powers to the Lieutenant Governor in Council and to the Premier to deal with emergencies in a timely and effective manner. The bill will amend the Emergency Management Act, and we believe that it will further improve the province's ability to respond to all types of emergencies. The bill will also help clarify under what conditions the province can declare an emergency.

More importantly, from the perspective of front-line police personnel, the legislation clarifies the powers available to our members in an emergency, and it will allow them to act quickly and in the best interests of community safety.

In an ideal world, there wouldn't be a need for this legislation, but unfortunately, as everyone knows too well, the world as we know it is now far from perfect. The tragic events of September 11, as well as SARS and the electricity blackout in 2003, clearly showed that a review of the provincial emergency powers legislation was needed. We need this bill because we must be prepared for emergencies.

As you're aware, the legislation would authorize the use of some far-ranging powers, which include:

- restricting travel or ordering evacuations;
- establishing facilities for the care, welfare, safety and shelter of people, including emergency shelters and hospitals;
- closing any place, public or private, including any business, office, school, hospital or other establishment or institution;
- putting into effect other measures deemed necessary to prevent, respond to or reduce the emergency.

The argument is always put forward by some that the powers are too broad and open to abuse. However, all of us can think of unique situations where the powers would be of great value in the event of a provincial emergency.

It is our understanding there have only been two declared provincial emergencies in the history of the province. The declaration of an emergency is something that is needed only in the most extraordinary circumstances. We believe that this legislation contains more than adequate safeguards.

Elected members are rightly put in positions of great trust by the public in a democratic society, and you must have the power to act quickly in times of emergency in order to safeguard our communities.

Police personnel also need to act quickly and decisively to protect Ontarians. Some have argued that current common law provisions and other legislation can be used to meet the same goals. Our members should not be expected to be creative or to explore other avenues during a crisis. The legislation must be clear and transparent so that police personnel and other emergency responders can react quickly to both limit and end the emergency. The legislation must be clear and transparent to members of the community as well.

We would like to take the opportunity to highlight one area that pertains to safety equipment. It may be outside the scope of this legislation, but relates closely to it. I think that many, if not most of us, tend to think of the need for very elaborate equipment to deal with emergencies. Certainly, there is a requirement for this, and we believe that it is in place. However, the same cannot be said of very basic protective equipment for police personnel in some jurisdictions.

In November 2000, the then Ministry of the Solicitor General issued a communicable disease policing standard. This standard, or guideline, was developed by policing stakeholders, ministry staff and other experts in the field. The standard, which has been copied for your information, also contained a ministry-designated equipment list. Many police services were quick to follow the guideline. Unfortunately, some other police services ignored it.

Our members have been actively involved in responding to suspected incidents of bio-terrorism since September 11. The vast majority of these calls were anthrax-related. Front-line police personnel were also actively involved in the SARS crisis and many were quarantined as a result. The ministry circulated bulletins on both anthrax and SARS, advising the policing community that the disposable masks and suits contained in the designated equipment list were adequate equipment to prevent them from exposure. Unfortunately, some police services had failed to provide this inexpensive equipment. Both the mask and the suit, which an officer might need only once in a career, cost less than \$10 each. However, both items could save his or her life.

Our members responded to the calls whether they had the equipment or not. That is the nature of their professionalism. However, we believe that this equipment needs to be in place and that this should be enshrined as a regulation, as are many of the other standards, to ensure compliance and officer safety across the province.

In closing, we'd like to thank the government for their continued support for community safety. The Police

Association of Ontario hopes, as you do, that this legislation is never needed. However, in the event of a significant emergency, the government must be able to act in a timely and effective manner. We believe that Bill 56 will enhance this ability, and we would urge its speedy passage.

We would like to thank the members of the standing committee for the opportunity to appear before you once again, and for your continued support for safe communities. We'd be pleased to answer any questions that you may have.

The Chair: Thank you very much. There are about four minutes remaining for each side. We'll start with the official opposition.

Mr. Garfield Dunlop (Simcoe North): Thank you very much, through the Chair, to Mr. Bruce Miller. First of all, I want to just put on the record our condolences to the PAO family. They've had a fairly difficult time in the last two weeks, with the wall of honour dedication and then of course losing two officers. We acknowledged both those officers in the House last week, and then again today. I wanted to put that on the record, because I know that when anything like that happens, it wears on all your members. Of course, police funerals, police memorials, are very important to the police family. So I thought that should be put on the record to begin with. Thank you for being here. I know it can't be the easiest day, when you're head of the PAO, to know that you lost one of your members late Saturday night.

1640

Bruce, I know that you're fairly supportive of this bill. I'm curious about some of the other types of amendments we've seen groups ask for. Last week, I know, for example, the Canadian Blood Services had asked for an exemption; the Ontario Society for the Prevention of Cruelty to Animals asked for some changes as well to include animals. Have you put any thought into any of these—maybe I should put it this way; maybe you haven't even heard of some of the other recommendations or amendments that people have asked for. But strictly from a policing perspective, though, you're fairly happy with the bill right now, I take it.

Mr. Miller: Yes. First of all, we'd like to thank you for your words of support and also thank all three parties for their support. I know that all three leaders were out last week to the funeral in Windsor, and it was greatly appreciated.

Certainly, this bill, to us, makes sense. As we understand it, there's similar legislation right across the province. Our members, police officers, need some clear direction and some clear powers to be able to deal with things in substantive emergencies. We believe that there are adequate safeguards put in place. Certainly, human rights are a huge issue for our organization, as they are with others. But to us, this legislation makes sense.

Mr. Dunlop: If I could just have a moment more, as we go through clause-by-clause and listen to the details and the recommendations from all the different stakeholders who are here to listen, and from people who write

in as well, I guess you'd be prepared to listen to their amendments in the areas that would make them satisfied and supportive of the legislation as well?

Mr. Miller: I think everybody's goal is to get the best legislation. But in terms of exemptions, I didn't have the opportunity to review other positions because, unfortunately, as you know, committee proceedings are not always posted on Hansard as quickly as they are in the Legislature, so I'm not familiar with some of the other requests.

Mr. Dunlop: That's fine for now. Thank you.

The Chair: Mr. Kormos.

Mr. Peter Kormos (Niagara Centre): Thank you kindly, sir. First, responding to your observation that there will be those who put forward the argument that the powers listed here are too broad and open to abuse, it may surprise you that I'm increasingly being persuaded of the McMurtry argument of "Be careful what you wish for"; that listing powers, in contrast to using common law powers, makes the powers that can be exercised restrictive and overly narrow. As a fan now, through Bill 138 and now Bill 56, of the observations made by then-Justice Minister Roy McMurtry, I have come closer and closer to the camp of, as I say, his admonition of "Be careful what you wish for" when you start listing powers, as compared to relying on the common law, because the common law, of course, is flexible; from time to time, it does utilize common sense as its base. So my concern is that, by statutorily defining the powers, it's only those things that can be done then. I, for the life of me, am not going to start to think of circumstances where these powers may not be adequate. But you can bet your boots, because life never ceases to surprise us, that something will happen where a police officer, in good faith and historically within the scope of the common law, may want to exercise a power, or rather the emergency czar may want to exercise a power. That's just an observation.

I think there's going to be some concern and debate around the restrictive nature of the powers and the fact that, by codifying them, you then remove yourself from the common law jurisdiction.

Most interesting at the moment are your observations about safety equipment. I think some of the submissions we're going to hear later today may well address that too, I suspect, because nurses, as you know, and other health professionals have a lot of concern about the availability of safety equipment in keeping workers safe.

I've taken a look at your appendix with the sample board policy—that's part of what you're speaking of, the ministry policing standards manual—and then the equipment and facilities list for communicable diseases. Can you tell us how many police services boards have enacted the sample board policy that you've included with your material?

Mr. Miller: I can't give you an exact number there. I can advise you that I canvassed 12 associations last week, and three of them were not in compliance.

Mr. Kormos: Can you identify them, not by name—but by name, if you want to—but just by description? Are they big police services, small-town police services?

Mr. Miller: It ranged. I had a response from one large police association, one medium-sized and one small police association.

Mr. Kormos: That's pretty shocking stuff, isn't it, Garfield, that police services boards wouldn't be enacting that recommended board policy?

What about the designated equipment list? The mobile kit would be the most relevant one. Is that fair?

Mr. Miller: The mobile and the personal would be the most relevant.

Mr. Kormos: Presumably, you'd want them in the trunk or somewhere under the back seat of a police car or other police vehicles.

Mr. Miller: That's correct. I can tell you that the Ministry of Community Safety and Correctional Services brought this forward to the police stakeholders, and they were advised by the OACP, the chiefs and the police services boards that everybody had this equipment, so those discussions on regulation ended a couple of weeks ago. It's just recently, when we surveyed our members, that we found that this is not the case, so we're bringing it before committee to try and get the regulation enacted. But we've certainly been disappointed in the reluctance from both the chiefs and the service boards to move in this area.

The Chair: Thank you very much. The government side?

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you for coming in today.

Going through your presentation, you mentioned things such as terrorism, the SARS episode and that sort of thing, but one of the things that we're faced with in my riding and in the agricultural community in general is emergencies around other communicable diseases within livestock. We've certainly seen things like hoof and mouth in England, and not that long ago we had avian influenza in BC. I'm wondering, have you discussed with your colleagues the role that the police might play, especially in rural communities, in terms of helping us to contain such outbreaks, should they happen? Have you consulted with your colleagues in BC or with other provinces or other countries that have experience with these kinds of outbreaks?

Mr. Miller: Certainly, Ontario has taken a real lead on this issue. We've been involved in discussions with the Ministry of Community Safety and Correctional Services to ensure that proper precautions and information are in place. We're certainly satisfied that that's covered off on today's date.

Mrs. Van Bommel: So you feel that your officers in rural communities would be able to deal with something if it were to come up?

Mr. Miller: I think that policing is a very resilient profession and that our officers will always be able to deal with it, but certainly these powers in Bill 56 would be crucial to both limiting and ending any emergency of that nature in Ontario. That's why we're urging the speedy passage of the legislation.

Mrs. Van Bommel: I know in my own community, knowing the officers in my area, I have great confidence

in their ability to work with the farmers and deal with an issue like this.

The Chair: Thank you, Mr. Miller. Once again, on behalf of the committee, our condolences on the loss of one of our police officers.

Mr. Miller: Thank you very much, Mr. Chair. We appreciate the support.

The Chair: Thank you for your presentation as well.

ONTARIO MEDICAL ASSOCIATION

The Chair: The next presentation is from the Ontario Medical Association. Please come up and state your name for Hansard.

Ms. Barb LeBlanc: Barb LeBlanc.

Mr. Patrick Nelson: Patrick Nelson.

The Chair: Thank you very much. You have 20 minutes. You may begin.

Ms. LeBlanc: Thank you, Mr. Chair. I'm the executive director of health policy with the Ontario Medical Association, and Patrick, beside me, is the OMA's director of public affairs. Unfortunately, our past president is unable to be with us today as there's been a death in his family.

1650

We appreciate the opportunity to make our views known about Bill 56. I'm going to begin my remarks today by acknowledging the need for the government to be able to marshal resources in the event of a declared emergency. I think it's important, though, to recognize that we must, by necessity, view human resources in a different light than commodities such as food, water and electricity.

As some of you may know, there's been a significant level of concern in the physician community about the potential for conscription of physicians under Bill 56. It was very helpful, back in March of this year, when we received a letter from Minister Kwinter stating in very clear and unequivocal terms that "it is not the intention of the proposed legislation to conscript any individual during a provincially declared emergency." Having this very clear statement of government intent helped our president of the day to calm concerns and to allow us to focus instead on a constructive approach to ensuring that the legislative language accurately reflects government's intent. So we'd like to focus on that today.

Before I get into possible approaches to amending Bill 56, I'd like to take a moment to outline for the committee the sections that we believe make it possible to conclude that conscription could occur under Bill 56.

The definition of "necessary goods, services and resources" at the start of the bill includes a variety of commodities, plus medical services. The order-making authority includes a list of matters upon which the government may make orders relating to the necessary goods, services and resources. Of interest to the OMA are numbers 9, 10 and 11, since, when taken together, they permit the government to make orders with respect to the use of medical services; the procurement, availability and

distribution of medical services; and the fixing of prices for medical services. In short, individual physicians could be ordered to make themselves available at any time and in any place in the province, and may not be paid at the customary rates, let alone providing for danger pay. That sounds like conscription to us.

We'd argue that this power is both inappropriate and unnecessary. It is inappropriate because physicians are not commodities like all of the other items listed in the definition of goods and services, and therefore should not be treated in the same manner. It's unnecessary, in our view, because physicians have a long and proud tradition of volunteering to put themselves in harm's way in the service of their patients and the general citizenry. Most recently, in the case of SARS in Ontario, physicians and other health care providers worked tirelessly to contain the outbreak and protect patients. Physicians are healers and helpers. They've always been there in times of need, and there's no reason to believe that would change. However, each individual physician, like every other citizen, must be free to make decisions about his or her own safety risks and act accordingly.

I'd now like to turn now to possible means of amending the legislation in order to ensure that the minister's commitment not to conscript physicians is reflected in the legislative language of the act.

The first way of doing this would be to simply revise the definition of "necessary goods, services and resources." This would be achieved by adding a paragraph which states that the definition does not include the human resources associated with the goods and/or services subject to an order.

Alternatively, we think it's also possible to achieve the desired outcome by adding a clause at the end of the order-making authority at paragraph 1 of subsection 7.0.2(3), which states that "nothing in the powers above is intended to apply directly to the individuals associated with the provision of the goods or services."

We believe that either one of these amendments would serve to better reflect the government's stated intent with regard to Bill 56. It would give the government the broad powers it needs in times of emergency to commandeer supplies and services, but would allow decisions to be made at the local level as to how and by whom medical services will be delivered.

Thank you, and we'd be happy to use our remaining time to answer any questions you might have.

The Chair: Thank you very much. There is a little bit more than four minutes remaining for each side. We'll begin with the third party, Mr. Kormos.

Mr. Kormos: Thank you, sir.

Thank you kindly. That's been a concern of ours as well, and Mr. Fenson of legislative research has provided us with a cleverly researched brief. In particular, he discovered a case from the Los Angeles Superior Court—Vail and Hayes—in which the observation is made by the court that "'negotiating' means the manager is haggling over the star's rate for a part or appearance or arguing over when the star will show up—and anything else is

procurement.” He there understands the word “procurement” to be something beyond the normal process of negotiating, tendering, because obviously the government may want to say that all this is doing is referring to government procurement in the usual sense where they tender and they get bids and they pick the highest bid or the lowest bid, because—take a look at this: 7.0.1(3)2, the preconditions that have to exist before an emergency can be declared:

“One of the following circumstances exists:

“i. The resources normally available to a ministry of the government ... or an agency, board or commission ... including existing legislation, cannot be relied upon without the risk of serious delay.”

Do you understand what I’m saying? One of the preconditions has to be that the services that are within the government’s direct control are inadequate in and of themselves. So then it can’t mean anything but the pressing into service of. Because there is yet another section that talks about how Lieutenant Governor in Council may determine compensation. Again, the fact that it may determine compensation suggests that it can decide that there’s no compensation or that, if there is compensation, it’s whatever they happen to say it is. Once again, that is not the process of negotiating, to wit haggling, over a movie star’s rate for an appearance, as in that Vail and Hayes judgment out of the Los Angeles Superior Court which Mr. Fenson found. I have no idea how he found it, but it’s one of those things that researchers know how to do.

Canadian Blood Services said they wanted this because they had similar concerns to yours. They said they wanted specific exemption. I don’t know; legislatively we’d have to get some counsel, but when you start doing that, that means anybody who isn’t exempted is, by nature of not being exempted, included. So that’s dangerous stuff too. What are you suggesting by way of amendment?

Ms. LeBlanc: As I outlined, we think that we can accomplish the government’s intent by simply distinguishing between being able to make orders with respect to the service broadly speaking versus inserting the government powers into decisions about how individual persons will be utilized. So in the case of medical care, it may be the case that the government makes a decision that it wishes to have the resources of all the downtown Toronto hospitals, for example, but it does not need to then take that next step and say that persons A, B, C through ZZ are necessarily required to act at any given shift for any given service.

So we think that by being able to have the power to compel services broadly, the service itself will then determine through its usual course of labour and other activities how it will deploy its human resources.

1700

Mr. Kormos: The other new power is of concern as well, and that’s paragraph 12: “The authorization of any person ... to render services of a type that that person ... is reasonably qualified to provide” but not authorized to

provide. Again, Mr. Fenson, without making any overt statement, has drawn us to the references that could lead us to believe that this isn’t just about out-of-province people who aren’t licensed to practise in the province of Ontario, because the bill talks specifically about, “The employment of a person ... shall not be terminated...” That presumably only applies to Ontario people. So paragraph 12 is of similar concern, where people are going to be called upon, forced to do things that they may not be qualified to.

The Chair: Thank you, Mr. Kormos. The government side.

Mr. Bas Balkissoon (Scarborough–Rouge River): Let me say thank you for being here and giving us your input. Before you received the minister’s letter, your association and the ministry staff met extensively over this. You’ve received the minister’s letter explaining his position. Did your association accept his position at the time, or did you continue to pursue discussions?

Ms. LeBlanc: We accepted that, and as I alluded to in my remarks, it was very helpful to receive that letter, because that allowed us essentially to step down, and instead of pursuing a public response, to start to think about how we might help to make the legislative language reflect the stated intent. So it was extremely helpful to get the minister’s letter.

Mr. Balkissoon: Okay. The sections you identified here as 9, 10 and 11—I’m assuming that’s out of 7.0.2.

Ms. LeBlanc: That’s correct.

Mr. Balkissoon: Can you expand on number 11?

Ms. LeBlanc: Sure. Of course, the fixing of prices for commodities makes perfect sense, depending on the nature of the emergency. In the case of substituting the term “physician services” into this, you can now read, “The fixing of prices for medical services.” And then, the physician may or may not be able to charge the standard OHIP rate, never mind being able to get any incentives for danger pay or anything like that. The concern there was simply that probably price-fixing doesn’t apply to human resources in the way it does to the other things that are listed in the definition.

Mr. Balkissoon: If I were to explain to you that the government’s intention here is as a result of the experience during SARS, that after the outbreak there was a lot of price gouging of the public, and this is to allow the Premier and the Lieutenant Governor in Council to prevent that from happening in the future, would that put you at ease?

Ms. LeBlanc: Certainly it would, as long as it’s attached to supplies and services. We think human resources generally just have to be dealt with a little bit differently.

Mr. Balkissoon: Okay. Thank you very much.

The Chair: Mr. Dunlop.

Mr. Dunlop: Thank you so much for being here today. A couple of things I want to put on the record to begin with: I thought we would have learned something from SARS in 2003. I can hardly believe that here we are, almost three years later to the day, finally getting

around to doing clause-by-clause on a bill. I just want to ask you one really simple question. The bill in its present form: Would the Ontario Medical Association support it?

Ms. LeBlanc: I don't believe it would, given that there does seem to be some ambiguity on the question of whether medical services might be subject to clauses 9, 10 and 11.

Mr. Dunlop: So I can safely say, then, when I go into the House and do third reading debate, that if the government does not plan on amending this bill, the Ontario Medical Association would not be supportive of the legislation?

Ms. LeBlanc: That's correct.

Mr. Dunlop: Thank you very much.

The Chair: Thank you, Ms. LeBlanc and Mr. Nelson, for your presentation.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 106

The Chair: The next group is the Ontario Public Service Employees Union, Local 106, London Health Sciences Centre. Good afternoon. Can have you state your name for Hansard.

Ms. Sandi Blancher: Sandi Blancher.

Ms. Mary Ing: Mary Ing.

Mr. Tim Little: Tim Little.

The Chair: You have 20 minutes. You may begin.

Ms Ing: Good afternoon. Thank you for this opportunity to present our position on Bill 56 on behalf of the Ontario Public Services Employees Union and our Local 106 from Victoria Hospital, University Hospital and South Street Hospital of the London Health Sciences Centre, St. Joseph's Health Centre of London and Alexandra Hospital in Ingersoll.

I am Mary Ing. I am an executive board member of OPSEU, representing our members in southwestern Ontario, and I'm a health care professional. I've been a medical lab technologist in the London Health Sciences Centre, LHSC, for over 20 years.

With me is Tim Little, our legislative liaison from OPSEU, and Sandi Blancher. Sandi is the vice-president of OPSEU Local 106 and has also been a medical lab technologist for 31 years.

There are over 700 OPSEU members who work on the front lines of health care in the London area hospitals. LHSC is one of Canada's largest teaching hospitals dedicated to excellence in patient care. With a staff of over 8,000 compassionate professionals, we care for over 650,000 patients each year, and we're a referral centre for over 35 hospitals in the province.

Last week, the committee received OPSEU's central brief and recommendations on this legislation. Patty Rout, my board colleague at OPSEU, outlined for you the scope of health care and emergency service workers we speak for. Whatever future health or safety threat the province may face, OPSEU members will be involved.

We wish to remark on certain aspects of the current reading of the bill in hope of seeing it significantly improved before it becomes a law.

Although SARS was a major crisis in the lives of the people of Ontario, it was merely a test run. The Minister of Labour dealt with the SARS crisis as if it were a hospital problem, and it was not recognized as a health and safety issue. The Ministry of Labour inspectors were egregiously absent from our workplaces, and in fact were not sent to deal with hospital complaints.

It is our view that there should not be compromises in Ministry of Labour procedures, regardless of the emergency. The Ministry of Labour should be responding, as it normally would, to infectious diseases, concerns and all complaints. Ministry inspectors should be working where the workers are.

We are front-line hospital workers and we deal with any emergency that comes our way, regardless of the threat to our own lives and the possible threat to our own families. Acts and regulations should be respected and enforced because health care workers need and deserve the protection of provincial legislation, the same as any other workplace.

As a response to the SARS crisis, the Ministry of Health directives limited the movement of staff. In a multi-site hospital such as LHSC, this meant the cancellation of all meetings. Most unfortunately, this included the meetings of the joint health and safety committee. Can you believe that? In the height of a crisis, health and safety committee meetings were cancelled. This was a blatant contravention of the Occupational Health and Safety Act, indicating that although the province was in the midst of an emotional and traumatic crisis in the lives of health care workers, the very legislation that provides for safe workplaces was being violated. Any emergency legislation should require that both parties in the workplace and the Ministry of Labour satisfy their obligations under the Occupational Health and Safety Act.

For Bill 56 to be successful, it will also need to ensure that there is respect for the workplace rules, and this means our collective agreements. We do not believe the safety of Ontario's residents can withstand a repeat of what occurred during the SARS crisis. At that time, the rights of committed front-line workers to reasonable protection under the law and as bargained with our employers was simply pushed aside.

OPSEU represents over 30,000 health care workers and thousands of others in critical services who would be called on during an emergency. We are all relying on this bill to get it right so that they do not have to face chaos and an inappropriate level of risk again. We do our jobs to protect workers and the public and, unless this legislation actually sets out to protect all workers and the public, we will have precious little chance of avoiding the pandemonium that was SARS.

In a pandemic, health care workers will be on the front line, but the focus of much of the planning is not on protecting the front line. This bill needs to identify workplaces that could be affected by an emergency order and direct the planning and negotiations to the provisions of the collective agreement. The legislation needs to support this direction.

1710

Ms. Blancher: This is what we've heard from our members:

There are many areas that are currently ill-prepared for another SARS situation, pandemic or other major catastrophe. Our members are concerned and frightened that the government has not learned from previous mistakes.

No one seemed to be in control. There was confusion from management, and therefore on the front lines, as to who was setting the direction to protect the public and health care workers.

The joint health and safety committees that did meet and which had action committees were often left wondering who was in control of the situation.

Health care workers are often in a situation where they must make a choice to protect their own health and safety, as well as their own families, or save the life of a patient. If resuscitation is required and the patient has a suspicious illness, there is often a need to hesitate, to consider the need to protect themselves. One of our members said, "I don't want to die. By the time I put on that suit, the patient could be dead ... but I would go in to resuscitate that mom to save her unborn child."

Workers have to make this choice and then have to deal with not only the emotion of making it but the possibility of having to defend their actions, as well as losing their livelihood or possibly losing their own lives. Employees acting in an emergency should not be faced with the risk that their actions may involve them in a costly lawsuit.

These decisions are even more complicated and difficult in the face of chronic understaffing, contracting out, unfilled vacancies and increases in the use of part-time workers. This exasperating situation clearly demonstrates the need for extensive training and planning. We experienced fear and uncertainty because proper precautions were not in place.

The provincial government has provided funds to purchase some special supplies and equipment, such as hazmat suits for chemical, biohazard and nuclear radiation containment, but training and the continued readiness is up to the hospital. But these same hospitals are chronically underfunded and understaffed.

Ms. Ing: Among the military, police and firefighters, training is done to the extent that preparations happen without thinking and second-guessing. Those sections of our public services are trained and trained, and trained some more.

We wouldn't think of sending troops into battle, SWAT teams into a rioting jail or firefighters into burning buildings untrained or without the proper equipment, yet we all expect this of health care workers. Advanced planning and coordination with employees need to be enshrined in this bill. All we have between us and the next SARS or pandemic is a sign on the door and universal precautions.

This government, as it was campaigning for our votes, said that they respected and valued our work and wanted

to work with us to provide better services to our public. We take our role in serving and protecting the public very seriously. We take our role as a trade union very seriously. In the latter capacity, it is our duty to see that workplace rules are followed, especially when there are lives at stake.

To avoid chaos during the next provincial or local emergency, we must see changes that ensure employers respect our rights. That's what allows us to have confidence in one another—employer to employee and union to government.

Our experience tells us that serious emergencies are the time to be guided by the rules of work which are carefully negotiated in organized workplaces. A crisis condition is not the time to experiment. We need to be prepared. For the Ontario public and for your health care employees, there is far too much at stake to do otherwise. Thank you.

The Chair: Thank you very much. We'll begin with the government side, with about four minutes for each side.

Mr. Balkissoon: Thank you very much for coming here and giving us your input. Your counterparts were here earlier and basically outlined the same conditions, but I just wanted to pursue one particular interest of mine. During the SARS outbreak, I guess your major complaint about the Occupational Health and Safety Act is that the Ministry of Labour was not there to help you and enforce the act. Is that what it is?

Ms. Ing: That's fair, yes.

Mr. Balkissoon: So if enforcement was present and the act was enforced as it's written, would you say we would have had a better situation?

Ms. Ing: And collective agreements followed.

Mr. Balkissoon: So, really, the Occupational Health and Safety Act, the legislation, is there to protect you, but at the time of SARS, enforcement wasn't there, and we need to ensure that happens.

Ms. Ing: Yes, we do.

Mr. Balkissoon: Okay.

Mr. Little: I would just add to Ms. Ing's comments with regard to the Occupational Health and Safety Act that, particularly in a crisis, it's not sufficient to simply have an act and enforcement; it needs to be posted that it is enforced. That at every workplace encountering an emergency the Occupational Health and Safety Act is in effect should be a particular posting in that workplace. As well, the Ministry of Labour should advise and consult with both the employer and employee representatives, ensuring that the joint health and safety committees are in effect and are to meet.

Mr. Balkissoon: Okay. But that would be all part of the Occupational Health and Safety Act. That's the point I was driving at. Are you happy, then, that this act clearly states that this act does not override the Occupational Health and Safety Act and that that would remain in place and supersede this in the next emergency, if there is one? Does that make your organization happy and pleased?

Ms. Ing: We're saying that during the SARS crisis, the Minister of Labour did not send Ministry of Labour inspectors.

Mr. Balkissoon: I can't hear you; you're going to have to speak up a little louder. Somebody's talking behind me.

Ms. Ing: Okay. We're saying that during the SARS crisis, there were no Ministry of Labour inspectors in our hospitals, in our workplaces. I believe they thought that maybe the level of risk was too high or that they didn't recognize it as a health and safety concern. We need to work within the legislation and our collective agreements, and we need to be able to assure our members and all the public that we're working together on this.

Mr. Balkissoon: The next point I'd like to clarify is that I understand the Ministry of Health is currently in discussion with all the stakeholders and within the ministry staff itself in preparation for a pandemic in the future. So therefore, would your organization not be a stakeholder in those discussions that are going on right now?

Ms. Ing: You mean OPSEU or our hospital?

Mr. Balkissoon: Well, the hospitals. I would think the unions would be too, at some point in time.

Mr. Little: I think you've hit the nail on the head: the assumption that because a hospital is consulted, the front-line bargaining agents of the employees there are being consulted. And that's a leap of faith, if you're making that assumption. I think what our recommendations go to in this regard is that it has to be explicit in the legislation, that the bill will be inadequate if it doesn't explicitly state that consultations with the bargaining agent and the sanctity of the collective agreements are expressly part of the bill.

The Chair: Thank you very much. Mr. Dunlop?

Mr. Dunlop: So I take it you're not supportive of the bill in its present form.

Ms. Ing: In its present form, no. We have submitted several recommendations.

Mr. Dunlop: I guess I've got to ask you, and I'll say this to you, because obviously we heard from the Ontario Medical Association a few minutes ago: I thought all this consultation was done for the last three years. Here we are, three years after SARS, and we've got half a bill. Almost everybody who's walked into this room so far has said that major work has to be done on the bill. When I asked a question today—I'm going to tell you, read Hansard from this afternoon. I asked a question on behalf of the Ontario Society for the Prevention of Cruelty to Animals, the OSPCA. You've seen them around. I asked the Minister of Finance, and he comes back and insults me by calling me the name of a dog when I asked if he'd make amendments to the bill. That's what you're up against here. I don't know what's going to happen.

So you're against the bill. I'm certainly never going to support this bill unless there are major amendments made to it. I'll tell you that right now. I support what you're saying. After three years, I cannot believe that we've got to this stage where everybody coming in here is opposed to this piece of legislation.

Ms. Ing: I would agree with you, because after three years, and consulting with my members on the front line, we're still not ready. As we said in our brief, we're not ready. There are a number of things that haven't taken place, the follow-up isn't there, and this is of grave concern to our membership.

1720

Mr. Dunlop: But we're told—I'm sorry, Mr. Chair—over and over again that all this consultation has been done. Who have they been consulting with? The minister's office? That's all I can see, because the key stakeholders are not supportive of this bill.

Thank you.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, Chair. I'm loath to correct my colleague Mr. Dunlop, but the Police Association of Ontario supports the legislation.

Ms. Ing: We heard that.

Mr. Kormos: Yes. They were here earlier today. But there's been concern after concern expressed about it.

There's no section in here that guarantees that collective bargaining agreements will prevail, is there? Have you found one, Mr. Little? You're a lawyer. You're well paid. You're a smart, experienced barrister and solicitor.

Mr. Little: Well, to correct the record, I did one term at law school. I have looked in detail at the legislation, though, and neither our legal counsel nor I can find any reference to collective agreements remaining in force.

Mr. Kormos: Take a look at 7.0.13, the penalty section: plus up to a year in jail. We're not talking about parking tickets here; we're talking about going to jail.

And you've heard the concerns expressed around procurement of services in paragraph 11 of 7.0.2: "The fixing of prices for necessary goods, services and resources...." I don't know what it means but to say services are things provided by people. I know what it is to fix the price on gasoline; that means you determine a price and that's the price. When it says, "The fixing of prices for ... services," I can't understand what that means, Mr. Berardinetti, other than the prospect of opening up a collective bargaining agreement. I've seen that happen before. Trust me. I watched.

Mrs. Carol Mitchell (Huron-Bruce): You were in government then.

Mr. Kormos: Yeah, and which one of you people will have the gonads to vote against this bill because it permits contract opening, like New Democrats voted against the social contract? Which one of you?

Interjections.

Mr. Kormos: Check the record, Ms. Mitchell.

The Chair: Order.

Mr. Kormos: Which one of you will have the moral courage to vote against this bill because it violates collective bargaining agreements? Or will you surrender to your whip?

Interjections.

Mr. Dunlop: After your Minister of Finance—

The Chair: Mr. Dunlop, Mr. Kormos has the floor.

Mr. Kormos: This is getting raucous, Chair.

Interjections.

The Chair: Order. Mr. Kormos has the floor.

Ms. Ing: And that's what we're saying: We need to negotiate these terms and conditions of employment prior to the next emergency.

Interjections.

Mr. Kormos: Mr. Berardinetti is provoking Mr. Dunlop.

Mrs. Mitchell: I expect you to withdraw that statement.

Mr. Dunlop: I would never withdraw. After what—

Interjections.

The Chair: Ms. Mitchell.

Mr. Kormos: Let's get some mics turned on here.

The Chair: Order. Mr. Kormos has the floor.

Mr. Dunlop: You should be ashamed of yourself.

The Chair: Mr. Dunlop.

Mrs. Mitchell: You should be ashamed of yourself. Actually, I'm concerned about all of—

Mr. Kormos: This is making me very apprehensive and nervous and intimidated, in the context of this mud-slinging going on here.

Look, I have some real concerns about the prospect of opening contracts, especially when it will require people to do things that they may not believe they are qualified to do, that they may not believe they are authorized to do, because the legislation specifically says you can be not only deemed to be authorized but then you can be procured. That creates a double dilemma, forcing health workers into really problematic ethical situations. Part of the answer—you made reference to this—is for these employers to sit down with health workers and negotiate, as part of their collective bargaining agreements, the emergency management protocols. Is that fair?

Ms. Ing: Yes.

Mr. Kormos: Has that happened?

Ms. Ing: I would say not. We're asking for that in our recommendations.

Mr. Kormos: Why not? Have you people been been dilatory and not eager to sit down with your employers to discuss and negotiate emergency management protocols as part of the contract?

Ms. Ing: No.

Mr. Kormos: Well, where's the stumbling block? Who's been stalling?

Ms. Ing: I'm not sure what your question is, but yes, we would like to negotiate everything ahead of time. We don't want to wait until there's an emergency.

Mr. Kormos: But employers have shown no interest in engaging in those negotiations?

Mr. Little: Not in our experience.

Mr. Kormos: That's all I wanted to know.

The Chair: Thank you very much. Time's up.

Mr. Kormos: Thank you, folks.

ONTARIO NURSES' ASSOCIATION

The Chair: Next we have the Ontario Nurses' Association. Good afternoon.

Ms. Linda Haslam-Stroud: Good afternoon.

The Chair: If you folks can state your names for Hansard.

Ms. Haslam-Stroud: I'm Linda Haslam-Stroud, and I'm president of the Ontario Nurses' Association. Joining me today is Lawrence Walter, who is involved in legislative research at ONA, and Dan Anderson, who is our director of labour relations.

The Chair: You may begin.

Ms. Haslam-Stroud: Thank you very much for having me. As I said, my name is Linda Haslam-Stroud, and I am a registered nurse and president of ONA, or the Ontario Nurses' Association. I'm speaking on behalf of 52,000 registered nurses and allied health professionals who deliver care to Ontarians. We represent nurses in long-term-care facilities, in public health, in hospitals, in community, in industry and in home care.

I'm really pleased to have this opportunity to provide recommendations to your standing committee regarding the structure for emergency management as set out in Bill 56. I believe you all have a copy of ONA's submission. You'll see that there are nine actual recommendations. I'm just going to give you a bit of context and then briefly go through what each of those recommendations looks like. I'll then leave it to you.

ONA members work on the front lines of health care every day. Ontarians depend on us to care for them in their times of need, and it is a call that our members readily accept, whether it is in routine times or exceptional circumstances. Our public health nurses, for example, work to ensure compliance with the mandate of the Health Protection and Promotion Act, which takes on an additional urgency to prevent the spread of disease and to protect the health of Ontarians in a health emergency.

The health of Ontarians suffers, however, at the best of times when there are not enough nurses to provide the quality care that our patients expect and deserve. When you remove a nurse from the bedside or the front line, people may not get the care they need and are needlessly put at risk. It's against that backdrop of the central role that ONA members play in the delivery of health care that we've put forward our recommendations related to emergency management as proposed in Bill 56.

Our position is that effective emergency management requires clear rules within the health care workplace to guide employment during an emergency and processes to provide for the nurses' health and safety. We believe these considerations are absent from the emergency management structure set out in Bill 56, even though Justice Campbell, commissioner of the SARS commission, clearly recommended such additions in his second interim report.

When the health and safety of our nurses who provide care, especially in the charged atmosphere of an emergency, is compromised, or when working conditions are inadequately clear to ensure our nurses keep working throughout an emergency, care will suffer. It is our view that Bill 56 must contain clear assurances to nurses and

to other health care workers that their employment rights will be enforced during and after an emergency. I just walked in on the last part of the discussion, but it appears that you've already had some debate on that prior to us arriving. We also request clarity that precautions and processes will be in place to protect and enforce our members' health and safety.

I just want to turn now to the details of our concerns. There are about 85,000 practising registered nurses in Ontario today, and within the next two years, one in three, or more than 30,000 of those nurses, are eligible to retire. I think it's important to understand this in the context of emergency measures, especially with the potential of the flu pandemic. If these nurses retire at the rate that they can, our current nursing shortfall will become a major threat to the delivery of routine care in our health care system. In the event of a health emergency, measures that might conceivably be initiated, such as extensive quarantine and restrictions on employment in more than one health care facility, will magnify the inability of the front-line nursing staff to provide quality care to our patients.

This was our experience during SARS; I think SARS isn't too far past, and we all remember what happened there. The deployment of registered nurses was affected by the existing nursing shortages. There was the casualization of nursing positions working part time, and fewer nurses were available to work because of the home and work quarantines that took place during SARS.

We raise those issues in the context of Bill 56 to heighten the awareness of the need to put planning in place now for a health care workforce to be there when an emergency strikes. We believe there is a need to recognize and to support the central role of front-line health care professionals in any emergency.

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For this reason, we recommend that Bill 56 be amended to provide that emergency orders and plans set out a process for front-line health workers and their unions to be effectively informed, consulted and able to report their concerns during an emergency. This was one of the major gaps, obviously, with SARS, if you're familiar with what happened there.

This also requires that we have effective whistle-blower protection that allows us to raise urgent matters related to public health issues and patient/worker safety without repercussion during this emergency. You'll know, through SARS, that this was another issue that came to mind, that we the nurses on the front lines knew what was going on, and we're concerned regarding the fact that we did not have any whistle-blower protection. As you know, how SARS ended up transpiring to get attention was actually through front-line nurses, but it took too long through the processes that were in place.

Bill 56 sets out the authorization of any person to render services of the type the person is qualified to render. Minister Kwinter's parliamentary assistant has reassured health care stakeholders that the power in this section to authorize does not mean that nurses and others

would be forced to work in an emergency. Our concern is that Bill 56 does not clarify that current workplace terms and conditions are in effect so that health care workers are able to do their jobs in an emergency.

While we take the view that Bill 56, as drafted, does not override collective agreements, we endorse the comments from Justice Campbell that it would be preferable to have express clarity on that point written in the legislation. We wish to avoid any disputes with employers when the next emergency strikes, and we want that taken care of prior to that.

It is also our position that every emergency plan should provide for the advance collective bargaining of principles related to all employment issues that might affect health care workers. We believe that will go a long way to having a concrete process in place in the event of an emergency so that we all know where we're going with it.

We are pleased that Bill 56 does contain an override that the Occupational Health and Safety Act prevails in the event of a conflict with an emergency order. We commend the government for this acknowledgement of the importance of protecting workers' health and safety in an emergency. However, ensuring occupational health and safety statutory protections, while necessary, is insufficient during an emergency. Health care workers, while protected under Ontario's Occupational Health and Safety Act, are among those workers who have limited rights to refuse unsafe work.

It's our conviction that the current structures and processes associated with joint health and safety committees in health care workplaces must be operational and effective in emergency situations. Bill 56, in our view, does not provide sufficient clarity around the critical role and responsibilities of joint health and safety committees, especially during a health emergency, to deal with ongoing issues such as proper fit-testing of respirators, or masks, for the layperson. We recommend that unions and joint health and safety committees be immediately notified, activated and consulted when an emergency is declared, and that there be an ongoing requirement to consult with joint health and safety committees throughout an emergency.

In addition to effective processes for health and safety decisions to be made within health care workplaces, it is our view that it must be crystal clear which ministry has overriding authority on health and safety matters during an emergency. We believe that it should be clearly specified that it is the Ministry of Labour that is to take the lead and has overriding authority in workplace health and safety matters.

Most importantly, particularly during a health emergency, it is our firm belief that adequate supplies of proper protective equipment must be secured and the precautionary principle approach should be adopted. The precautionary principle means to err on the side of caution, so that we don't have any further deaths of our nurses on the front lines. As you know, two of our nurses did die during SARS. These points are essential in order to offer our members and all health care workers greater

workplace protection when determining measures to protect workers from infectious diseases with uncertain routes of transmission. We believe that presently we are still uncertain on the routes of transmission regarding the pandemic flu.

Finally, in our view, Bill 56 fails to provide sufficient clarity on a number of additional employment issues. We believe that voluntary compliance with emergency orders is contingent on advance planning. Loss of income during an emergency is a serious issue that must be contemplated in advance in Bill 56. We agree with Justice Campbell's view that a blueprint for compensation packages to replace lost income is a worthy consideration, and we ask your committee to take that into consideration. In addition, it is important to clarify in Bill 56 the precise duration of leaves of absence and protection to return, not only to employment, but to your job held prior to the emergency. We believe Bill 56 will offer better guidance to all with these types of additions that we have recommended.

We certainly welcome this opportunity to provide our recommendations relating to effective emergency management to you, the standing committee. Our members will never forget their experience during SARS. It is our sincere hope that the hard lessons we learned will also not be forgotten as we plan for the next emergency. Thank you very much for listening to the nurses, and we hope that you've been listening, before it is too late.

The Chair: Thank you. We'll begin with Mr. Dunlop.

Mr. Dunlop: Thank you very much, and congratulations on your presentation and on Nursing Week last week.

Ms. Haslam-Stroud: Thank you.

Mr. Dunlop: A lot of us met with nurses throughout the week and—

Ms. Haslam-Stroud: Did you have fun?

Mr. Dunlop: —got quite an earful.

Ms. Haslam-Stroud: I bet you did.

Mr. Dunlop: As typical nurses do on a regular basis.

After three years, I thought the consultation had taken place so that we would get this bill right. I hope we don't pass this bill and call it an emergency management act unless we get it right. You've got a number of recommendations that you've made. Clearly, you need a number of amendments. I guess all I want to say is that we won't be supporting this bill until those recommendations are made, because I think we should get it right or not pass it at all. We've had three years since SARS. We were under the impression that massive consultation had taken place to draft the bill we see in front of us today. Clearly, that hasn't taken place, because you're here making a number of recommendations. Other than the Police Association of Ontario, everyone else has had those recommendations as well. So I thank you for that, and we'll see. I'm hoping that the government will proceed with amendments that would address the concerns you have. Thank you.

Ms. Haslam-Stroud: Thank you.

Mr. Kormos: Thanks kindly, folks, all of you. First, if you don't mind, I want to apologize to Mr. Little for suggesting that he was a lawyer. No slander intended, sir.

One of the shocking things that we heard earlier today from the police association is that the designated equipment list for them to carry in their cars—this is why I'm mentioning it to you, because this is an issue that nurses and other health workers had and continue to have, the designated equipment list. He says it's worth around 10 bucks—still isn't in every police car in Ontario. Those are things like the gloves and the masks that allow them to more safely deal with biohazardous materials etc. One of the observations made over and over again during Judge Campbell's inquiry prior to his report was around health workers and nurses accessing that material. What's the status of that?

Ms. Haslam-Stroud: We are still in dispute with the Ministry of Labour and Minister of Health in relation to the minimum requirement for respirators, or mask protection. We're having ongoing discussions daily at this point in time. It is our belief that N95 masks must be the minimum requirement because the science is not clear on how this is transferred, and you'll see that in the document there. As far as the supply issue with SARS, that was an issue in relation to supplies.

But more importantly, the real issue was when the mandates came down from the government during SARS, what ended up happening was that the mandate may have come down to the employer; however, it wasn't coming down to the front-line nurses. So there could be a two- or three-day delay in a very urgent mandate coming down. That's why we're suggesting that, as far as protective equipment goes, Mr. Kormos, we need to basically err on the side of caution, which is in our submission, and we also need to make sure that there is adequate supply available. The cost of the different modules doesn't seem to be the issue at the present time in discussions with the ministry, according to my most recent communication with the ministry—actually, yesterday, on Mother's Day. However, we have not had a firm commitment from the government at this point in time that the minimum standard that we believe is necessary for the nurses in Ontario is going to be mandated. Presently, the employers have a very weak mandate as far as the supplies that they have to have available to us.

1740

Mr. Kormos: What is the status of negotiations with employers around emergency management protocols and inserting them into the collective bargaining agreement itself?

Ms. Haslam-Stroud: We're in central negotiations in the hospital sector. We have not commenced homes negotiations; that will be taking place in September. The hospital collective agreement is for 45,000 registered nurses. We have broken down in bargaining, and we are going to mediation.

In the discussions to date, the employer has suggested that we basically wipe out any type of security provisions in the collective agreement so that they can have a full,

100% lead in the case of an emergency. Obviously, that is not to the best benefit of our patients and nurses or the health of our patients and nurses. We have suggested to them that we meet at a provincial level as a coordinated group. Actually, our recommendation here is talking about principles in which we can put this forward, so that when the flu hits, we will have some principles in place that we can work through down to the 550 bargaining units in the province that we represent.

The Chair: Mr. Balkissoon.

Mr. Balkissoon: Just to expand on what you were just talking about, the planning you're doing for the next pandemic, which everybody is thinking will be a flu, you're working with the Ministry of Health on that?

Ms. Haslam-Stroud: Yes. It's been a very clear struggle between the Ministry of Health and the Ministry of Labour, because both groups are involved in a number of different committees.

Mr. Balkissoon: So you're clearly working with them to improve the legislation that comes under the Ministry of Health and the Ministry of Labour in terms of there being another pandemic.

Ms. Haslam-Stroud: We've been trying to work with the ministry. At this point in time, we have not been successful.

Mr. Balkissoon: Would you agree with me that this piece of legislation is umbrella legislation to deal with all emergencies, not necessarily medical, and therefore it should not be specific to medical cases, but that the Ministry of Health and the Ministry of Labour should look at their legislation to do amendments that are specific to an emergency of that nature?

Mr. Lawrence Walter: I would agree that it's an umbrella piece of legislation for emergencies, but I think you would also agree that almost any emergency would involve health care workers. I don't think we can imagine an emergency that wouldn't involve health care workers in some way. So I don't necessarily agree that broader principles shouldn't be incorporated into this legislation. That's really what our submission is talking about: broader principles that collective agreements would apply in an emergency, that health and safety legislation would apply in an emergency, and that joint health and safety committees would apply in an emergency.

Mr. Balkissoon: Would you agree, though, that in this piece of legislation that the minister is contemplating,

because he's the Minister of Community Safety, that he is basically looking at that umbrella, and that he will rely on the other ministries dealing with you on those specific cases, because it's absolutely necessary, and that this is the overriding piece of legislation? This is why, in this legislation, if you note carefully, the medical officer of the province still has all the powers she has under normal legislation. That's why the Occupational Health and Safety Act was also not affected by this act.

Ms. Haslam-Stroud: I think it's important that the recommendations that we have put forward—there are nine in total. We believe they need to be incorporated.

I have to say that the ministries have been very positive in trying to work with us. But to be very clear, we've been banging our head against a brick wall for some time in relation to emergency measures and protective devices between the two ministries. I don't think, frankly, as we move into this pandemic, there's really enough time for us to be continually meeting with all the different ministries to get it right. I think the government wants to get it right, and that's why you have offered up these committees for us to give our presentations. I would suggest that we need these overriding principles incorporated in the bill, and then whatever ministry is involved with the liaison for whatever the emergency might be, we'd obviously be liaising with that group of people.

I believe that the principles we've put forward should be incorporated in the bill and not left to another ministry to try to interpret, because the fact of the matter is, we believe the timing of this will be such that we will end up having further deaths of our nurses if we do not have these overriding principles incorporated into the bill. Give us something to work with so we can work with the different ministries involved. Specifically, for us, obviously, it would be the ministries of labour and health.

The Chair: Thank you for your presentation.

Ms. Haslam-Stroud: Thank you, Chair, for having us.

The Chair: That concludes our meeting for today. This committee stands adjourned until 10:20 on Thursday, May 18, because the first presenters have cancelled.

The committee adjourned at 1745.

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**Legislative Assembly
of Ontario**

Second Session, 38th Parliament

**Assemblée législative
de l'Ontario**

Deuxième session, 38^e législature

**Official Report
of Debates
(Hansard)**

Wednesday 31 May 2006

**Journal
des débats
(Hansard)**

Mercredi 31 mai 2006

**Standing committee on
justice policy**

**Emergency Management Statute
Law Amendment Act, 2006**

**Comité permanent
de la justice**

**Loi de 2006 modifiant des lois
en ce qui a trait à la gestion
des situations d'urgence**



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Wednesday 31 May 2006

COMITÉ PERMANENT
DE LA JUSTICE

Mercredi 31 mai 2006

*The committee met at 1004 in room 228.*EMERGENCY MANAGEMENT STATUTE
LAW AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À LA GESTION
DES SITUATIONS D'URGENCE

Consideration of Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997 / Projet de loi 56, Loi modifiant la Loi sur la gestion des situations d'urgence, la Loi de 2000 sur les normes d'emploi et la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail.

The Vice-Chair (Mrs. Maria Van Bommel): Good morning and welcome to the meeting of the standing committee on justice policy. The order of business today is Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997.

SUBCOMMITTEE REPORT

The Vice-Chair: Our first order of business is the motion for the adoption of a subcommittee report, and I would ask that someone read the report into the record and move its adoption.

Mr. Jeff Leal (Peterborough): It says:

Your subcommittee considered on Thursday, May 18, and Friday, May 19, 2006, the method of proceeding on Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997, and recommends the following:

1. That the committee meet for clause-by-clause consideration of Bill 56 on Wednesday, May 31, and Thursday, June 1, 2006.

2. That clause-by-clause consideration on May 31 commence after a presentation by the Ontario Association of Fire Chiefs on Bill 56.

3. That amendments to Bill 56 should be received by the clerk of the committee by 12 noon on Monday, May 29, 2006.

4. That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence

making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Vice-Chair: Is there any debate? I put the question: All those in favour? Thank you very much. The motion is carried.

ONTARIO ASSOCIATION OF FIRE CHIEFS

The Vice-Chair: We will now hear from the Ontario Association of Fire Chiefs. Welcome to the committee, and if you would come forward, please. Please introduce yourselves for the record. You have 20 minutes for your presentation. You may use all of that time, or, if there is any remaining time, there will be an opportunity for members of the committee to ask questions or make comment. Please go ahead.

Ms. Cynthia Ross-Tustin: Thank you, Madam Chair, and thank you to the members of Parliament and the rest of the committee for affording us this opportunity this morning to come and speak to you about Bill 56 and some of our concerns.

I'll just take a moment to introduce our group. This is President Lee Grant. He's the fire chief of Peterborough and is the president of the Ontario Association of Fire Chiefs. To my right is the first vice-president of the Ontario Association of Fire Chiefs, Fire Chief Richard Boyes from Oakville, Ontario. I'm the chair of the legislative committee. My name is Cynthia Ross-Tustin, and I am the deputy fire chief from the town of Bradford West Gwillimbury.

Sorry. I hope you can hear me, because I've lost my voice recently.

First of all, I'd like to point out maybe something just a little bit ironic. We're speaking to you about Bill 56, and today is the 21st anniversary of the tornado in the city of Barrie. So today is an emergency service milestone for many of us who are working in emergency services. Having been through many disasters, both of my colleagues have experience in disaster management and perhaps can answer some of your questions afterwards.

What we'd like to do today is bring our support to you for Bill 56. We do have some concerns and some questions, but generally we feel this is a strong piece of legislation. Emergency management in disasters needs strong legislation, and this legislation is the appropriate tool for us to get many of the things done that need to be done in

very short order. The province itself needs to do things in short order when they have provincial emergencies.

We represent all the fire chiefs in the province of Ontario, and as such, we also represent our municipalities and the life safety interests of our community. Most of us have more than one role. As the fire chiefs of our communities, we're in charge of the standing army. We can mobilize the most trained people with the most resources in the shortest period of time, and we do that on a routine basis.

The other thing we are, though, is our community's CEMC. That's based on the legislation from the Emergency Management Act, and that has to do with being the community emergency management coordinator. So we're sending our resources to the emergencies, but if you declare a provincial emergency, we're also the people who are going to be responsible for sending them elsewhere if you decide to take them from our communities.

We support the spirit and intent of this particular piece of legislation, and we believe it could be very valuable with certain enhancements or when certain questions are answered. We have a concern that some of the roles maybe are not as clear as they could be. We believe the province's role, generally speaking, is that of support and that of training and coordination.

In this province, we have always built our emergency management from the bottom up. We train people to have a disaster-resilient community; then the fire service or the local responses go; and then, and only then, when the municipality can no longer handle it, the municipalities call on the province. This legislation is the complete opposite of how the system is currently designed to work in this province, so we feel there should be some more stakeholder consultation to answer such questions as: If you're going to take our resources from our community, what's going to be left behind? The families of the people are counting on their husbands and wives on a day-to-day basis, but if that emergency responder leaves the community to go help elsewhere, what happens to them and how are they looked after? Emergency responders who look after our community have legislated duties on a day-to-day basis. Business must still get done. If you're taking our resources, whether it's the roads department or the fire department, who decides who stays back, and if we can't do our day-to-day business of fire protection—emergency response and fire prevention—in our community, what are the ramifications of not being able to do day-to-day business?

1010

What are the costs associated with that? Is the provincial government going to fund the movement of resources? For example, my community is a volunteer community. So if you need firefighters, we're happy to help. But in a duration event, the people we're sending are volunteer firefighters. How are you going to reimburse the firefighters? Are you going to reimburse the municipality for the stipend they get paid as volunteers, or are you going to look after these people at the real

wages they are giving up in their day-to-day jobs to go and assist their neighbours because the province has declared an emergency?

Has the province considered contracting-out legislation that's involved in the full-time fire service? Most collective agreements in the full-time fire service have contracting-out clauses, and if you're going to send firefighters from London to assist firefighters in Toronto or Kingston, you're going to have ramifications with full-time firefighters and contracting out.

No firefighter in this province would decline to help a brother firefighter; that's not going to happen. But we're talking about duration events, not a one-time, one-day let's go help. Duration events like the event in Peterborough went on for weeks. Who is going to fund those costs? Who's going to look after the people at home? These are issues that we have.

I guess one of our other biggest issues is, how are we going to help all these people play together? The province has backed away from certain infrastructure items. The interoperability of our radios: I can talk to my neighbouring municipalities, but I can't talk to Mississauga. I can't talk to the police. Our radios are not interoperable. They do not work. So if you would like all of us to come and help you as the province because you have declared an emergency, we have no resources to do that, and neither do you. There are no systems in place. My SCBA—self-contained breathing apparatus—will not work with the SCBA in a distant part of the province.

There are some flies in this ointment that need to be remedied before we can do what you need us to do. We need some more open stakeholder consultation, and we need to be part of the solution. We're not here to tell you that it won't work; we're here to tell you we want to help you make it work.

We would like to see emergency management put back on the rails for the incident management system that they have. That has fallen off. We do not have an integrated management system that would help all agencies that you require in a provincial emergency to work together. That has not happened. There are small things that need to be done, but they can all work together.

We would ask questions about occupational health and safety. If a municipality is responsible for their workers but they're sent elsewhere or relocated to assist with an emergency, do we have to send our supervisory staff or are they going to go and work for the supervisory staff in another municipality? An unknown and possibly untrained supervisor of my workers has ramifications for occupational health and safety. People will be asking questions.

Many of us have worked together as our CEMC—community emergency management coordinators—and done the steps that are required under the basic or essential level of emergency management developed risk analysis and the different systems that we have within our own municipality. Who is going to share those? How do they get coordinated so we can all work together in a bigger picture? Who is going to have control over those, and can they be shared?

Again, we go back to the basic premise that emergencies are best handled at home. Many examples have been learned from FEMA. We don't want another FEMA. We want to work collectively and co-operatively.

The penalties associated with this legislation are appropriate. It's the stick. You need a stick. If there's no stick, there's no point. But if there's no stick, there's also no carrot. There's not a lot here to help municipalities want to partner with you, because that's what you need. The province does not have the resources to handle a provincial emergency. They need our resources. There is no carrot. If you want to use our resources to handle your emergency, we need some assistance to be able to do that.

We would like to be your equal partner, not the people you go to just to take the resources from, and we would like to see that consultation in place so that we can assist you in the province to handle provincial emergencies as appropriately as possible.

I think those are our basic comments. We have clause-by-clause for you, and our points are outlined, but what we'd like to do is answer questions for you, because all of us have experience at various levels in handling emergencies throughout the province over the years.

The Vice-Chair: Thank you very much for your presentation. That leaves about 12 minutes for questions—four minutes for each party. Garfield, would you like to start, please?

Mr. Garfield Dunlop (Simcoe North): For clarification, could I just get one question to the clerk: If there are any amendments that came out of the deputation we just heard, would they be acceptable today?

The Clerk of the Committee (Ms. Anne Stokes): Anything can be tabled as we deal with this.

Mr. Dunlop: Thank you for that.

I don't really have a lot of questions. I appreciate the fact that you've come here today and taken an interest at the last moment—we're starting clause-by-clause in 12 minutes. A lot of the things you addressed today were addressed by the emergency managers' association—I forget the gentleman's name, but he was here a couple of weeks back and made a number of those requests for some changes, so some of these amendments are coming forward here.

I'm curious: Where we've had past emergencies that took place, can you give us some examples of how municipalities may or may not have been compensated for some of the costs when they actually went into another territory and provided their services?

Mr. Lee Grant: There are a number of mechanisms for compensation, but the most common one is that in addition to declaring an emergency, if it is a significant event, usually it is also declared a disaster from the provincial level, at which point you can start to recover your costs through ODRAP. In an ODRAP application, you normally build a very small business case, submit it to MMAH for approval and then, based on that business case, move your municipal resources to another community. For example, when we had the flooding in Peter-

borough and we needed multiple refuse trucks, we were able to get them from Toronto, but before those trucks left the city of Toronto, we had negotiated a fee-for-service basis that was covered through an ODRAP agreement.

It's a little more difficult if you have only declared a state of emergency. The funding mechanisms are far sketchier and you may find yourself with no recourse to collect costs in that case, unless one municipality is directly prepared to pay the other.

Mr. Dunlop: So you have to declare a disaster, not an emergency? Is that what you're saying?

Mr. Grant: The easiest way to flow funding in a significant event is if it's a disaster area in addition to being an emergency.

Mr. Dunlop: Okay. Just so I'm clear on this, who declares that? The local mayor?

Mr. Grant: No. The Premier, in the end, has to declare an area a disaster area based on a proposal and details and a case of facts put forward to the Minister of Municipal Affairs and Housing.

Mr. Dunlop: Okay.

The Vice-Chair: Mr. Kormos, please.

Mr. Peter Kormos (Niagara Centre): Thank you, all of you, for joining us.

One observation that's been made, most recently by Osprey reporter Jamie Wallace in a province-wide column, is that the level of preparedness—not in terms of planning, because municipalities have complied with the law in terms of planning. Especially in small-town and smaller-town Ontario, like where I come from and where some of you come from, it's done at a disproportionate cost to the municipality—but the level of resourcing is of concern.

You, dare I say it, fight with your councils on an annual basis for a labour-intensive, high-cost service; you and police services are the two big-ticket items. My concern is about the level of preparedness. I suppose the other question is, do we prepare for a 110% response or a 100% response to the worst-case scenario, or are we pragmatic and prepare for an 80% response to the worst-case scenario? Just anecdotally, for instance, people in the health services have told me that if there were a dramatic disaster at Pearson—a couple of big planes and their passengers—we simply don't have the emergency room capacity in the GTA to accommodate that. It simply wouldn't happen.

Can you comment on those things: assessing the worst-case scenario and the ideal level of preparedness if it's not 100%, and then talking especially about how smaller-town Ontario copes with resourcing and giving itself the tools?

1020

Mr. Richard Boyes: It is a real concern that, as fire chiefs, we appear before our councils to do our budget submissions and we have to make business cases as to where our funding is applied. Seeing that a lot of it is equipment-intensive for major emergencies, it becomes a competing event versus our day-day activities. Mr.

Kormos is quite right: It's a challenge, because usually when you get yourself into a state of emergency, it is almost 100%. I know that in Halton region, we are looking at the pandemic, and we simply do not have enough hospital beds to even start to look at not even the worst-case scenario but just some sort of scenario as to the number of people coming out. So overcapacity is an issue. The staffing we would send to an emergency can probably be drawn from other resources, but again, how are the municipalities left to work with it? So it is a very real challenge.

If there is something that comes out—JEPP is out there, which helps us with issues, but it's also based on the fact that it's a percentage, and if you have done something else in your community and do not apply again for JEPP funding. Something like the fire services grant, which was given again, should give us the assistance to help us do specific emergency management issues. There should be some sort of funding, whether it's interoperability for radios, SCBA or command centres, but we do need to grow it because most municipalities in Ontario do need that assistance.

The Vice-Chair: Thank you very much. From the government side, Mr. Leal.

Mr. Leal: It's a pleasure to have Chief Grant here from Peterborough because, on July 15, 2004, we went through a real-life emergency, a major flood. Within hours, the Minister of Municipal Affairs and Housing declared a disaster area in Peterborough.

Mr. Kormos talked about fire chiefs fighting for budgets at city council. Indeed, our experience in Peterborough when Chief Grant would come forward was that we used to approve his budget. We used to set aside those dollars for emergency planning, and because of that, we were very successful in meeting the challenge on July 14, 2004. There was no loss of life and there were no major injuries. In fact, the devastation was in the neighbourhood of about \$60 million in damage. I want to compliment the chief because he played a critical role in coordinating the fire services in the whole area to re-deploy their resources into the Peterborough area to meet the challenge and successfully prevent loss of life and major injuries. Chief, I just want to compliment you for all your good work almost two years ago now.

Mr. Grant: Thank you, Mr. Leal.

The Vice-Chair: Any further questions? I want to thank the Ontario Association of Fire Chiefs for coming in to see us this morning and making your presentation.

We will now commence clause-by-clause consideration of Bill 56.

Mr. Kormos: At the outset, Chair, I express my gratitude to Mr. Nigro for his capable help in drafting any number of amendments, and to Ms. Stokes for her ever-present patience and capacity to accommodate.

The Vice-Chair: The committee is certainly privileged to have such good staff.

Committee members should by now have received a revised package of motions. Are there any comments,

questions or other amendments that are coming forward at this stage?

Mr. Kormos: I just want to check. I've got 5b and 5c. They're loose.

The Vice-Chair: Yes, 5b and 5c have been added. Are there any further?

Mr. Kormos: No, thank you.

The Vice-Chair: We will start on section 1. Are there any comments, questions or amendments?

Mr. Bas Balkissoon (Scarborough–Rouge River): I move that section 7 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following definition:

“‘animal’ means a domestic animal or bird or an animal or bird that is wild by nature that is in captivity; (‘animal’).”

This amendment provides that the evacuation orders could deal with animals and birds. This wording is consistent with and supported by the OSPCA and addresses the concern that they presented.

The Vice-Chair: Is there any debate on the motion?

Mr. Kormos: I understand the motion. I understand that it's responding to the interest expressed by the OSPCA. But I was curious when I saw this. Is a bird not an animal?

Mr. Balkissoon: I suppose in legal terms it's not.

Mr. Kormos: I don't know.

Mr. Dunlop: A bird's a bird.

Mr. Kormos: Well, humans are animals.

Interjection: Humans are mammals—

Mr. Kormos: Mammals are animals. So are turtles animals.

Interjection: But—

Mr. Kormos: But what? Mineral, animal, vegetable. I'm serious. What is going on here? Of course a bird's an animal. It's not a mineral; it's not a vegetable or vegetation.

Mr. Balkissoon: The wording is consistent with the act that governs the OSPCA. I believe they're in agreement with this wording.

The Vice-Chair: Any further debate?

Mr. Kormos: I just wondered if we're excluding, by virtue of this definition—Mr. Berardinetti would know the legal term—reptiles or fish. I don't know. I'm going to support the motion. I just find this interesting.

The Vice-Chair: Thank you, Mr. Kormos. Any further debate? I'm going to put the question. All those in favour? Opposed? The motion is carried.

We move to the second motion.

Mr. Balkissoon: I move that the definition of “municipality” in section 7 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

“‘municipality’ includes a local board of a municipality, a district social services administration board and, despite subsection 6(2) of the Northern Services Board Act, a local services board; (‘municipalité’).”

This amendment is necessary to resolve the conflict in the existing EMA and the Northern Services Board Act and Bill 56, so it's technical in nature, in a sense.

The Vice-Chair: Is there any debate on this motion? I will now put the question. Shall the motion carry? The motion is carried.

We move to number 3. Mr. Dunlop, please.

Mr. Dunlop: Any of the amendments we've presented today, we've discussed with the stakeholders. In this case, it was the Ontario Medical Association. We also have a couple of other amendments from the emergency managers and from the OSPCA. I'm not going to go into long detail every time we present a motion. There is a total of eight PC motions here today. This motion is based on our correspondence with the Ontario Medical Association.

The Vice-Chair: Would you read it into the record for me?

Mr. Dunlop: I move that the definition of "necessary goods, services and resources" in section 7 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

"'necessary goods, services and resources' includes food, water, electricity, fossil fuels, clothing, equipment, transportation and medical services and supplies, but does not include the human resources associated with the goods or services; ('denrées, services et ressources nécessaires')."

1030

The Vice-Chair: Is there any debate on this motion?

Mr. Kormos: I understand the intent of the motion and the submissions that it responds to. It would, as I understand it, permit the procurement, the seizure, of items, but not of humans and their services. The New Democratic Party supports the amendment.

Mr. Dunlop: Thank you.

Mr. Balkissoon: The government does not support this motion, and I'll tell you why. If you follow through, you will see that government motion number 5 has been rewritten to remove the concerns that were expressed about these issues. If you look at the motion itself, it does not make much sense and may be problematic to the government if it wants to regulate the use of goods, services and resources, such as distribution, availability, etc. The revision of paragraphs 9 and 10, and if the government wants to fix prices for them as per paragraph 11—those powers would not work very well if the definition excludes human resources associated with the goods. It is unclear why the exclusion for human resources is necessary. The definition would be in the context of an order to limit access to the public for medical and transportation services.

If you read the new paragraph 9, you would see that we've clarified using the necessary goods and we've added distribution, which was somewhere else in the bill before, to provide clarity. Paragraph 10 presently reads, "The procurement of necessary goods" and services, which is the government's ability to procure but not

follow the rules and regulations that will probably tie the government's hands in the case of an emergency.

The Vice-Chair: Further debate?

Mr. Kormos: It's regrettable that the government takes this position because I think, by inference, it becomes clear then that it's the government's intention that this bill permit the seconding or pressing into service of humans, people. The reference to the government's amendment number 5, paragraphs 9 and 10—once again, Mr. Fenson gave us very able advice on the word "procuring," and the word "procuring" in legal definition can also mean pressing into service, forcing into service. As well, when you add paragraph 11 of what will be the government amendment, similar to the existing one, "fixing prices" means that the government will determine what the people providing those services will be paid. So I understand where the government's coming from, but I find it regrettable because it confirms our fears from the very beginning.

The Vice-Chair: Further debate?

Mr. Dunlop: Madam Chair, if I could, just a quick comment. I felt that in the case of an emergency, the one group of people we should be listening to are our doctors. When the doctors come forward with some recommendations that they think would be worthwhile to have in the legislation, I think we should listen. That's why we've presented this amendment. If the government doesn't see fit to support it, so be it.

I'll be asking for a recorded vote on it as well, Madam Chair.

The Vice-Chair: Further debate? I shall now put the question. We've had a request for a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

The Vice-Chair: The motion is lost.

We move on to the next motion for amendment.

Mr. Kormos: I move that section 7.0.1 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Person or entity in charge

"(4) In making an order declaring an emergency, the Lieutenant Governor in Council or the Premier, as the case may be, shall specify the person or entity that is to assume responsibility to provide direction during the emergency and shall publicize the name of the person or entity with the order declaring the emergency."

The motions being presented by the New Democratic Party as amendments to this bill are in response to the submissions made by ONA, the Ontario Nurses' Association, and OPSEU, the Ontario Public Service Employees Union. I leave it at that.

The Vice-Chair: Any debate?

Mr. Balkissoon: The government does not support this amendment. The bill is very clear about who can exercise emergency powers during a provincially declared emergency. The order-making powers are conferred on cabinet. However, cabinet may delegate the power to the minister or to the Commissioner of Emergency Management. Under the proposed subsection 7.0.4(3) of the bill, it requires the person making the order to take all steps reasonably possible to bring the order to the attention of the persons affected, pending their publication. The bill also includes an express requirement for the Premier or the delegated minister to make regular reports about the emergency to the public during the emergency period.

This particular amendment could possibly cause conflict with the emergency plans of the individual municipalities, boards or institutions, causing further confusion, so we're not prepared to support it.

The Vice-Chair: Any further debate?

Mr. Dunlop: Can we record that vote as well, Madam Chair?

The Vice-Chair: Certainly. I'm now going to put the question, and we've had a request for a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Orazietti.

The Vice-Chair: The motion is lost.

The next motion for amendment: Mr. Dunlop, would you like to read this one into the record, please?

Mr. Dunlop: I move that subsection 1(4) of the bill be amended by adding the following section:

"Essential employees

"7.0.1.1 In the event of a declaration of emergency under subsection 7.0.1(1), the determination of which employees are considered to be essential in an emergency,

"(a) shall be made by every municipality in accordance with the municipality's emergency plan required under section 3;

"(b) shall be by each minister of the crown in accordance with the minister's emergency plan required under section 6; and

"(c) shall be made by each agency, commission or other branch of government designated by the Lieutenant Governor in Council that is required to formulate an emergency plan under section 6 in accordance with its plan."

Again, Madam Chair, if I may, this is based on comments made by the emergency management association of Ontario. We felt they had some strong points of view, particularly around the issues of municipalities, and that's why we've presented this amendment.

The Vice-Chair: Is there any debate?

Mr. Balkissoon: The government finds this particular amendment a little problematic or confusing, because the designation of an employee as essential has no effect in this bill or the Emergency Management Act because there's no scheme under the act to deal with essential employees. In the absence of any legislative basis of what "essential" may mean, it doesn't appear that the motion really does anything; therefore, it would have no real effect. Furthermore, it is not clear what the purpose would be of designating someone as essential. So for those reasons, the government cannot support this particular amendment.

The Vice-Chair: Further debate?

Mr. Kormos: I regret the position that the New Democrats have to take on this amendment, and our opposition to it in no way indicates that we agree with the government's analysis of it, by any stretch of the imagination.

Mr. Leal: No, you could never do that.

Mr. Kormos: Look, I understand what the proposal was and what was attempting to be addressed, but it's our position that determination of essential workers should be the result of discussions between workers, their unions and their employers and that it should be a collectively bargained issue, not one that's dictated by legislation, because we have concerns further on down the bill about the impact the bill has with respect to collective bargaining agreements. So it's with regret that, while I appreciate the intent of the amendment—I think I understand what "essential worker" means in the context of labour relations. I have concerns about the manner in which the determination of who's an essential worker is going to be done should the motion pass.

The Vice-Chair: Any further debate? No. I shall now put the question.

1040

Mr. Dunlop: I'll record that as well.

Ayes

Dunlop, Elliott.

Nays

Arthurs, Balkissoon, Berardinetti, Kormos, Leal, Orazietti.

The Vice-Chair: The motion is lost.

We move on to amendment number 5.

Mr. Balkissoon: I move that section 7.0.2 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

"Emergency powers and orders

"Purpose

"7.0.2(1) The purpose of making orders under this section is to promote the public good by protecting the health, safety and welfare of the people of Ontario in

times of declared emergencies in a manner that is subject to the Canadian Charter of Rights and Freedoms.

“Criteria for emergency orders

“(2) During a declared emergency, the Lieutenant Governor in Council may make orders that the Lieutenant Governor in Council believes are necessary and essential in the circumstances to prevent, reduce or mitigate serious harm to persons or substantial damage to property, if in the opinion of the Lieutenant Governor in Council it is reasonable to believe that,

“(a) the harm or damage will be alleviated by an order; and

“(b) making an order is a reasonable alternative to other measures that might be taken to address the emergency.

“Limitations on emergency order

“(3) Orders made under this section are subject to the following limitations:

“1. The actions authorized by an order shall be exercised in a manner which, consistent with the objectives of the order, limits their intrusiveness.

“2. An order shall only apply to the areas of the province where it is necessary.

“3. Subject to section 7.0.10, an order shall be effective only for as long as is necessary.

“Emergency orders

“(4) In accordance with subsection (2) and subject to the limitations in subsection (3), the Lieutenant Governor in Council may make orders in respect of the following:

“1. Implementing any emergency plans formulated under sections 3, 6, 8 or 8.1.

“2. Regulating or prohibiting travel or movement to, from or within any specified area.

“3. Evacuating individuals and animals and removing personal property from any specified area and making arrangements for the adequate care and protection of individuals and property.

“4. Establishing facilities for the care, welfare, safety and shelter of individuals, including emergency shelters and hospitals.

“5. Closing any place, whether public or private, including any business, office, school, hospital or other establishment or institution.

“6. To prevent, respond to or alleviate the effects of the emergency, constructing works, restoring necessary facilities and appropriating, using, destroying, removing or disposing of property.

“7. Collecting, transporting, storing, processing and disposing of any type of waste.

“8. Authorizing facilities, including electrical generating facilities, to operate as is necessary to respond to or alleviate the effects of the emergency.

“9. Using any necessary goods, services and resources within any part of Ontario, distributing, and making available necessary goods, services and resources and establishing centres for their distribution.

“10. Procuring necessary goods, services and resources.

“11. Fixing prices for necessary goods, services and resources and prohibiting charging unconscionable prices in respect of necessary goods, services and resources.

“12. Authorizing, but not requiring, any person, or any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide.

“13. Subject to subsection (7), requiring that any person collect, use or disclose information that in the opinion of the Lieutenant Governor in Council may be necessary in order to prevent, respond to or alleviate the effects of the emergency.

“14. Consistent with the powers authorized in this subsection, taking such other actions or implementing such other measures as the Lieutenant Governor in Council considers necessary in order to prevent, respond to or alleviate the effects of the emergency.

“Terms and conditions for services

“(5) An order under paragraph 12 of subsection (4) may provide for terms and conditions of service for persons providing and receiving services under that paragraph, including the payment of compensation to the person providing services.

“Employment protected

“(6) The employment of a person providing services under an order made under paragraph 12 of subsection (4) shall not be terminated because the person is providing those services.

“Disclosure of information

“(7) The following rules apply with respect to an order under paragraph 13 of subsection (4):

“1. Information that is subject to the order must be used to prevent, respond to or alleviate the effects of the emergency and for no other purpose.

“2. Information that is subject to the order that is personal information within the meaning of the Freedom of Information and Protection of Privacy Act is subject to any law with respect to the privacy and confidentiality of personal information when the declared emergency is terminated.

“Exception

“(8) Paragraph 2 of subsection (7) does not prohibit the use of data that is collected as a result of an order to disclose information under paragraph 13 of subsection (4) for research purposes if,

“(a) information that could be used to identify a specific individual is removed from the data; or

“(b) the individual to whom the information relates consents to its use.

“Authorization to render information anonymous

“(9) A person who has collected or used information as the result of an order under paragraph 13 of subsection (4) may remove information that could be used to identify a specific individual from the data for the purpose of clause (8)(a).

“Powers of the Premier

“Powers delegated to Premier

“7.0.2.1(1) If an order is made under section 7.0.1, the Premier may exercise any power or perform any duty

conferred upon a minister of the crown or a crown employee by or under an act of the Legislature.

"Powers of Premier, municipal powers

"(2) If an order is made under section 7.0.1 and the emergency area or any part of it is within the jurisdiction of a municipality, the Premier, where he or she considers it necessary, may by order made under this section,

"(a) direct and control the administration, facilities and equipment of the municipality in the emergency area, and, without restricting the generality of the foregoing, the exercise by the municipality of its powers and duties in the emergency area, whether under an emergency plan or otherwise, is subject to the direction and control of the Premier; and

"(b) require any municipality to provide such assistance as he or she considers necessary to an emergency area or any part of the emergency area that is not within the jurisdiction of the municipality and direct and control the provision of such assistance.

"Bylaw not necessary

"(3) Despite subsection 5(3) of the Municipal Act, 2001, a municipality is authorized to exercise a municipal power in response to an order of the Premier or his or her delegate made under subsection (2) without a bylaw."

This is a complete rewrite of section 7. The main points of it are to add the phrase "or movement" in paragraph 2, which deals with the orders restricting commercial transport, which could include the transportation of livestock.

In clause 2 we added the reference to animals, as previously discussed, because of the concerns expressed by the OSPCA. It specifically deals with the evacuation of animals.

1050

Clause 3: we replaced the word "requisition" in paragraph 6 with the word "appropriating." This would be to clarify the government's ability to obtain property without consent.

Clause 4 was a grammatical change in the form of the wording. It was recommended that this change be made by legislative counsel and, as such, we did.

Clause number 5: We rewrote 9 and 10, as I spoke to previously. This would address the concerns that were brought up with the words "using" and "procurement."

Clause 6: We added the reference to "privacy" as a result of concerns issued by the Information and Privacy Commissioner. "Privacy" is a term that more clearly captures what is necessary here, and it complements the existing term "confidentiality."

Clause number 7: The Premier's powers are moved into this area specifically so that you could differentiate between the Premier's powers and cabinet powers, further clarifying the bill.

With that, I'd move that this motion be supported.

The Vice-Chair: Is there any debate?

Mr. Kormos: Far from a total rewrite, let me just make some obvious observations. Subsection (4), paragraph 12: a very interesting addition, because the original paragraph 12 said, "The authorization of any person, or

any person of a class of persons, to render services of a type that that person, or a person of that class, is reasonably qualified to provide." Look at what the amendment does, "authorizing, but not requiring," and while I respect that with respect to the, by fiat, licensing of people to do things that they're not otherwise licensed—you're not going to require them to do those services even though they're being authorized.

By virtue of putting "but not requiring" in this paragraph but not putting "but not requiring" in the procurement paragraph, that, by implication, again confirms that the government very much wants to maintain the power to press people into service, and not just press them into service but then to fix the price to be paid for that service.

By adding "but not requiring" here, they very uniquely in paragraph 12 say, "but not requiring," and by failing to insert it in any other, the inference to be drawn there, in my view, and other people smarter than I am may well comment on this, is that you are required with respect to other sections.

I find it interesting that paragraph 3 in subsection (4) says, "evacuating individuals and animals"—I appreciate the addition of "and animals"; that's consistent with what the SPCA sought—"and removing personal property," but it then goes on: "and making arrangements for the adequate care and protection of individuals and property," but not animals.

Do you see the omission there, Chair? There's a problem. The government responded to the SPCA's concern about animals being left behind, be they household pets or, perhaps on a more dramatic scale, livestock, farm animals, horses, amongst other things. So, very specifically and very clearly the government omits the power to make arrangements for the adequate care and protection of animals. I think that's a very serious omission. The government may want to address that.

The other interesting thing is the lack of parallelism in this particular paragraph, because they talk about "evacuating individuals and animals and removing personal property." Mr. Nigro might help in this regard. I think that means "chattels." But the care and protection is of "individuals and property." I see one of the reasons people don't leave their homes, and we saw this dramatically through CNN and various news reports of the tragedy in New Orleans and area, is because they're afraid of looting. Right? They don't want to leave their home behind, unprotected.

So is the paragraph designed to give the government power to provide protection for that real property that's left behind—in other words, because you can't evacuate it, right? You can't move the house. You can move the chattels, which include animals, personal property. I'm unclear. I think this is problematic.

Clearly, the paragraph doesn't provide for the care of animals that have been evacuated. And when it says that the government shall make arrangements for the care of property, are they talking about arrangements for the care of the real property that's been abandoned because you

can't evacuate it, or are they talking about provisions for the care and protection of the chattels, or is it meant to be all-inclusive, or is it meant to include all forms of property? I don't know. If it's all-inclusive, then arguably it could include animals as well because animals are personal property, right? They're chattels, the animals that are being contemplated. As a matter of fact the SPCA, when they proposed language, talked about the definition in terms of animals that are owned as compared to wild animals.

This is what happens, because here you've got one amendment alone that is four pages long, and the problem when you start—it's like getting a suit tailored and then putting on weight. Has this ever happened to you? It's happened to me—putting on weight from when you first got fitted for the suit to when you go to pick it up, and no matter what they do, they can never quite get the suit to fit right again. It hasn't happened to you. It's only happened to me. But this is the problem when you do this sort of piecemeal and major addressing.

I'm not going to support this anyway, and let me tell you why very quickly. I don't want to belabour the point.

Look, "regulating or prohibiting travel to" or from: the authorities already have that power. We can shut down airports, we can close highways, put up roadblocks, block off towns; we do it all the time. Up on the TransCanada, when the road gets washed out from time to time, the OPP puts up the blockades. They shut that roadway and you can't use it. They prohibit travel to those areas. So that happens all the time. You don't need the Emergency Management Act.

"Evacuating individuals and animals": We already heard from the bureaucrats when—what does that mean? It means, at the end of the day, merely ordering the evacuation, with no power to go in there because you don't have the resources, for Pete's sakes. You're dealing with a major flood, a major disaster. You haven't got resources to start carting people away. You make the evacuation order, so it's a power without any real teeth to it. Do we want to have teeth to it? Do we want scarce emergency personnel occupying themselves with one or two individuals who are ornery or just plain stubborn or whatever their perspective might be? We see this in day-to-day life.

"Establishing facilities for the care, welfare"—the government already has the authority to do that.

"Closing any place, whether public or private"—I suggest to you that for public places we certainly have the authority to do that. Once again, in terms of closing a private place, what's the enforcement? What are we going to do? Send the OPP into Tsang's corner store at the corner of Denistoun and West Main by my house? Are we going to go and tell Tsang and Monica to shut their corner store "or else we're going to arrest you"? Of course not. Again, there's purported power here that the government would say fills a vacuum, and I say, on the contrary.

You can go on and on: "collecting," "storing," "disposing," "waste." Of course the government has that

power. "Procuring": Why do we need an emergency power to procure? Does it mean precisely what we've been suggesting it means, and that is to confiscate or press into service? The government doesn't need an emergency power to contract for, does it? It doesn't need that power set out in the Emergency Management Act. The government can buy anything it wants, any time it wants, and it does, with our money, with our constituents' money.

"Fixing prices": I say to you that if it were only a restriction on unconscionable pricing, it would be far more palatable. But when it talks about "fixing prices for necessary goods, services," we're talking about setting the rate for professional services as well at an arbitrary level with no appeal right.

One of the things that concerned me, when I heard from the fire chiefs earlier today, that's consistent with what other people have said, is that nowhere in this bill—because the Lieutenant Governor in Council "may" compensate, and they will determine the level of compensation. There's no arbitration process. There's no appeal process for a person who has provided a service, provided goods or had them confiscated for them to appeal the arbitrary level of compensation that's been determined by the Lieutenant Governor in Council.

We're not going to support the amendment, because we don't support the section that it amends, but I do raise some concerns. In terms of being helpful where I probably shouldn't be helpful because I don't support the amendment, I'm interested in what the government says about paragraph 3 on the care of animals once they are evacuated.

1100

Mr. Balkissoon: I just wish to add, about the government requiring the word "procuring," that if you recall, during SARS there was a need to obtain a mask and gloves and whatever. If we were to follow the normal procurement process of issuing a tender and waiting for the tender to be bid on, etc.—in an emergency, you can't do that. So the whole idea of clause 10 is to be able to procure goods without going through the normal process that governments have in place. That's the government's position.

The Vice-Chair: Any further debate? I will now put the question.

Mr. Kormos: Recorded vote.

Ayes

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

Nays

Dunlop, Elliott, Kormos.

The Vice-Chair: The motion carries.

We move on to motion 5a. Mr. Kormos.

Mr. Kormos: I move that subsection 7.0.2(3) of the Emergency Management Act, as set out in subsection

1(4) of the bill, be amended by adding the following paragraph:

“4. An order shall take into account, to the fullest extent possible, the terms of employment set out in a collective agreement that applies to a workplace affected by the order.”

Very briefly, if I may, again this speaks for itself. It protects the collective bargaining agreements of workers, but it doesn't prohibit the government from making an order, which is what should make the amendment that much more palatable to the government members here; they should be eager to support it.

It says “take into account,” but if it had merely said “take into account”—here's where the skills of legislative counsel are displayed—it could just be a cursory consideration. But legislative counsel has understood the goal of our request for the amendment, based on submissions made by public sector health workers: “to the fullest extent possible.” In other words, you'll abide by the collective bargaining agreement but for the most extraordinary of circumstances when it could be argued it would be impossible, or close to impossible, to abide by the collective bargaining agreement.

That's why we did that. This is a compromise on our part. I want the government to understand that. It's designed to make it possible for government members to vote for this amendment, if they really mean what they say about not pressing health professionals and health workers, among others, into service and arbitrarily determining how much they're going to be paid and/or how many hours they're going to work and/or whether or not they're going to have a meaningful right to refuse unsafe work and/or, more importantly, whether or not they're going to have real access to the protective devices, which we learned—Mr. Dunlop, remember the Police Association of Ontario? We still don't have every cruiser in Ontario equipped with that \$10 package of safety equipment: the gloves, the face mask and the very, very basic sort of stuff that protects police officers, who might have to respond to circumstances where you've got bio-hazards.

There we are. I look forward to this passing and becoming a part of this bill. I welcome the opportunity to have assisted the government in demonstrating that it is not going to be abusive arbitrarily and confiscatory with this bill.

Mr. Balkissoon: Because the government can't predict the next emergency and who would be involved or where it will take place, in which sector, we find that this particular motion would be extremely impractical, to take into account all existing collective agreements across the entire province, in a situation where an order could affect a large number of workplaces and these collective agreements all have distinct, unique clauses in them.

We believe that emergency planning has taken a whole different turn in recent times. This type of language would be better in collective agreements and the emergency plans of the local institutions and stake-

holders who are involved in emergency planning, such as municipalities etc.

As result of that position, we don't believe we can support this motion. We would support the bill as it's written.

Mr. Kormos: The next crisis might be unpredictable, but the Liberals are certainly predictable in their response to these modest proposals. But that's precisely the point. New Democrats believe, as do health workers, among others, that emergency protocols should be built into collective bargaining agreements. They've all indicated they're ready to sit down with employers and begin negotiating these now, hopefully well in advance of the next crisis. You work with people, not against them. Workers in the emergency response field have indicated an eagerness to sit down and negotiate terms of a collective bargaining agreement that deal with extraordinary circumstances as well as their own health and safety and the health and safety of their families.

I'm just so disappointed in the government and its response to this modest proposal.

Mr. Balkissoon: I would just like to say that the McGuinty government has worked really hard at building relationships with all the unions across all sectors. I would think that in an emergency situation we would continue to work with the co-operation that has taken place.

I would also say that the fact that emergency plans are being updated right now and are sort of fluid—as a government, we would continue to work with the stakeholders to improve their emergency plans, to deal with their collective bargaining agreements and to ensure there's full co-operation to serve the best interests of Ontarians in the next emergency. I think we take that position pretty strongly.

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: Recorded vote, please.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

The Vice-Chair: The motion is lost.

We move on to motion 5b. Mr. Dunlop.

Mr. Dunlop: I move that paragraph 3 of subsection 7.0.2(4) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

“3. Evacuating individuals and removing personal property, including animals, from any specified area and making arrangements for the adequate care and protection of individuals and property.”

That's very similar to what the government presented, but we have an additional motion on top of that after this.

The Vice-Chair: Further discussion?

Mr. Kormos: With respect to Mr. Dunlop, it's not similar at all; it's far superior to what the government proposed. This addresses the problem that we saw in their paragraph 3, where they excluded the care of animals. What you have done is make it very clear that you can evacuate individuals and personal property, including animals as personal property, and then you provide for "the adequate care and protection of individuals and property," implicitly that same personal property, to wit, the animals. You've provided language here that's far clearer and far more certain than the Liberals' paragraph 3, because you provide some certainty as to the care of animals once those animals—domestic or captive animals; private property animals as compared to wild animals—are evacuated. You have provided some certainty.

I think the government should just acknowledge that this is better wording and that it serves the intent that they claim they have in a preferable way. I'm going to be supporting this.

1110

Mr. Balkissoon: The government takes the position that we can't support this particular motion, and I'll tell you why. We see the emergency plan as a bit of a pyramid in that the province is the higher level plan. The bill that we're proposing has to deal with all situations. Because the care for animals can vary in various municipalities—as an example, Toronto may not have a farm, but they have a zoo; or you go to Guelph and you have a lot of farms, and you may have livestock. Our belief is that our bill should be at the higher level, and this type of plan should be specified in the local municipal plans and the institutions and stakeholders in that area in whatever plan they have in place. This is better dealt with at the front line and at the lower level.

Mr. Dunlop: What we were trying to do, after listening to the comments made by the OSPCA—and I agree with them—they wanted a bill that would give some powers to the government that would be passed on to the municipalities at the time of an emergency. What we're trying to say, both in this motion and in the one following it, is that it's far more complete and it does in fact address an emergency if there are animals that have to be relocated, taken to a clinic or whatever it may be. We want to address that in the bill. We don't think your amendment does that, and our particular motions do look after animals in a far more responsible manner.

Mr. Kormos: Mr. Balkissoon is doing so much sucking and blowing that I'm going to start calling him Mr. Hoover. On the one hand, he says that the government wants to occupy this emergency management field with extraordinary powers, but then he says, "Oh, but that one's better left to municipalities." And in terms of relationships with emergency workers: "That one's better left to municipalities."

Where are you on this one? To listen to you guys is like trying to pick up mercury out of a broken thermometer: You think you've got it in your grasp, but then it

slips away and slides somewhere else. I guess it's a very Liberal approach to the matter. Thank you, Mr. Hoover.

Mr. Balkissoon: I'll just repeat—I think the fire-fighters came in here this morning basically saying that they see the province at a higher level of oversight and that the front-line people are better equipped to do the job, and that's how we feel. In this particular case, livestock, farms and zoos are better dealt with by the front-line people and not us, and that's why our bill is not as specific as this is.

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

The Vice-Chair: Shall motion 5b carry? This is a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziotti.

The Vice-Chair: The motion is lost.

We will now move to motion 5c. Mr. Dunlop.

Mr. Dunlop: I move that paragraph 4 of subsection 7.0.2(4) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

"4. Establishing facilities for the care, welfare, safety and shelter of individuals and of animals, including emergency shelters and hospitals."

That's one of the recommendations that the OSPCA talked to the ministry about, and they felt that you were going to include this in your amendments as well.

Mr. Kormos: I support this amendment. Once again, without in any way altering the basic language of paragraph 4, the Conservatives, through Mr. Dunlop, have simply added the word "animals"—in other words, making certain that animals are going to be provided for, cared for, once they're evacuated.

So, the government is interested enough in animals that it wants the power to evacuate them, but not interested enough in animals that it wants the power to care for them once they're evacuated; you're going to leave that up to the municipalities. Well, if you're going to leave the care of the evacuated animal up to the municipality, why don't you leave the evacuation of the animal up to the individual municipality, because all municipalities are different. Some are rural, with a lot of horses and livestock; some, like the city of Toronto, have zoos.

Once again, why not, then, make municipalities—because it's the front-line services, Mr. Balkissoon will tell us, as fire chiefs did, that deal with these things municipal. Well, we knew that. That's been our commentary on this whole issue from the get-go, from day one: that if you're talking about beefing up emergency management, you beef up those front-line services.

I made reference to the McMurtry report, post-Mississauga train derailment, which predates even the—

jeez, there are at least a couple of you who are old enough to remember the Barrie tornado, never mind Mississauga. Well, you were two years old at the time, Mr. Berardinetti.

Mr. Lorenzo Berardinetti (Scarborough Southwest): I remember.

Mr. Balkissoon: He remembers.

Mr. Kormos: He remembers. It was one of those early childhood memories.

In any event, it's front-line emergency personnel who deal with these things, always, forever and ever. The province doesn't have on-the-ground emergency personnel throughout the province. The province has highly specialized, regionalized emergency teams, and far more limited in numbers, minuscule numbers, as compared to what's out there in the municipalities.

It just boggles the mind. I thought I had reached the point where nothing surprises me anymore around here, but it boggles the mind to see the Liberals entrench themselves and, just out of spite—out of pure spite and stubbornness, and I suppose because it's Mr. Dunlop's idea rather than theirs—not accept this motion.

The Vice-Chair: Further debate?

Mr. Balkissoon: Similar to motion 5b, we take the same position that to better manage emergency, the front-line people are better equipped and that the municipal plans should really be dealing with their geographical area.

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

The Vice-Chair: Shall this motion carry?

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

The Vice-Chair: The motion is lost.

We move now to motion 6. Mr. Dunlop, please.

Mr. Dunlop: Thanks again, Madam Chair. I guess the remainder of our motions will be comments made by the emergency managers. We wanted to act in their best interests because they are front-line people as well.

I move that section 7.0.2 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Exception, emergency plan in place

"(6.1) Despite subsection (5), if a municipality has an emergency plan formulated, the municipality may follow its emergency plan rather than an order made under subsection (4) or (5)."

The Vice-Chair: Do you want to add any comment to that, Mr. Dunlop? No further comment?

Mr. Dunlop: No.

The Vice-Chair: Okay. Is there any debate on this motion?

Mr. Kormos: I defer to Mr. Balkissoon.

Mr. Balkissoon: Under the existing EMA, all municipalities are required to have an emergency plan, so the statement in here, "if a municipality has an emergency plan," is totally inappropriate. This motion would permit municipalities to follow their own emergency plan rather than a Premier or cabinet order. The Premier's powers to direct municipalities only apply once an emergency declaration is made. This power may be required if there is a provincial emergency, which is not necessarily addressed in a municipal plan, and it could go across boundaries of municipalities. In that case, we would need a coordinated approach. As the firefighters clearly stated earlier today, when you need a coordinated approach across boundaries, then it's better in the hands of the province. So the government cannot support this motion.

The Vice-Chair: Any further debate?

1120

Mr. Kormos: I find myself confused by Mr. Balkissoon, because over the course of the last half-hour he has argued for municipalities to have an overriding jurisdiction in response to emergencies. He was so persistent that I was able to make the argument for him in advance of his making the argument last go-round.

Now, all of a sudden it's a 180-degree reversal. One amendment he's over here; next amendment he's over there. One of the nice things about being a Liberal is that you don't always have to be a Liberal, and that's being illustrated today. They can be anything they want to be, any time they want to be. On one amendment or two amendments or three amendments Mr. Balkissoon says, "No, government can't support that because it's up to the municipalities."

Now, when Mr. Dunlop wants to recognize that maybe, just maybe, and people like Mr. Arthurs and Mr. Leal and Mr. Berardinetti—everybody here has been on municipal councils of one sort or another, or darn near everybody. Maybe, just maybe Mr. Dunlop is of the view that people down there in the municipality have a better understanding of what's going on as compared to the folks here in the Pink Palace. Is there a little bit of Toronto-centric attitude prevailing?

I suppose my only concern would be, if and when municipalities would override the provincial emergency powers—and this may assist Mr. Balkissoon—that they may then not avail themselves of the resources that the province would make available. But I say that's a different issue. I think, yes, municipalities out there, especially when you talk about most of Ontario, the remote parts of Ontario—once again I encourage you people. I know we have time constraints. Michael Prue mentioned just the other day in the House about having been up with Gilles Bisson in Timmins—James Bay, in places like Attawapiskat, Peawanuk and Kashechewan. I've had the opportunity to travel some of those places with Bisson as well, he being their MPP.

I invite any and all of you—and Bisson would love to take any and all of you up there—to visit some of those

places in Ontario. Some of you from the north understand perhaps better than southerners do. Some of these parts of Ontario are so remote, so removed, so isolated, so underserved, so underresourced that they don't even have broken tools. Let's look at the logistics of moving external personnel into some of these remote areas. Even with the best-made plans, you're talking about not hours but days, sometimes more than days, in terms of moving resources into some of these remote communities.

The issue is twofold. One is, yes, recognizing that local municipalities can respond more quickly, and I believe they can. I believe people on councils, especially of smaller-town Ontario, understand that. They can respond more quickly. Two, they can assess the scenario more accurately, but the problem is that they don't have, in many cases—I'm suggesting Peterborough, clearly, with its fire services was able to respond to the flooding, but who knows what level of increased flooding would have happened before those resources became strained or stretched to the point where there weren't adequate resources? That's speculation.

So I find it disturbing that the government won't give more credit to this proposition and dismisses it out of hand. Notwithstanding my concerns about perhaps conflict, I will be supporting this motion because I respect the intent of it, and it certainly warrants more consideration.

The Vice-Chair: Further debate? I will now put the question.

Mr. Dunlop: Recorded as well, please.

The Vice-Chair: Shall the motion carry?

Ayes

Dunlop, Elliot, Kormos.

Nays

Arthurs, Berardinetti, Balkissoon, Leal, Oraziotti.

The Vice-Chair: The motion is lost.

We'll now move to motion number 7. Mr. Dunlop.

Mr. Dunlop: I'm getting the feeling this may not pass either.

The Vice-Chair: Don't be so presumptuous.

Mr. Dunlop: Again, following the concerns of the emergency management, who I thought spoke from a very important position: They clearly were concerned about the government interfering in an emergency strictly because of the government, not because they were really doing what was right, and that's where I felt they had some good points. I think Mr. Kormos brought it up as well here a moment ago when he talked about the size of our province and how remote some of these areas actually are, that if an organization does have a plan in place, the emergency order would not necessarily be something they'd take their advice and follow.

I move that section 7.0.2 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Exception, deployment detrimental to municipality

"(6.2) Despite subsection (5), a municipality may refuse to comply with an order of the Premier or his or her designate that requires the deployment of municipal resources outside the jurisdiction of the municipality, if the deployment of the resources would be detrimental to the management of the emergency within the municipality's own jurisdiction."

The Vice-Chair: Any further comment, Mr. Dunlop?

Mr. Dunlop: No comments.

The Vice-Chair: Debate?

Mr. Balkissoon: As I stated before, emergency management is done in a sort of pyramid effect. Central control and administration of functions may be necessary during a declared provincial emergency. The Premier may require the authority to issue orders of municipal emergency assistance where it's necessary. This particular motion would restrict the powers of the Premier. In that case, if you had an emergency that was cross-jurisdictional, it would prove to be an impediment for the Premier to deal with the emergency on behalf of all Ontarians.

We believe that the bill as it's written has all the accountability and responsibility—reporting to the public, to the assembly—and therefore, the way the act is constructed, it gives the Premier the power to deal with a provincial emergency. All this particular motion will do is to be an impediment in the way of the Premier dealing with that emergency.

Again, I go back. If you understand emergency management, it has to be done in a pyramid. The front line will have a plan, and when that plan fails, then the local municipality would be in touch with the emergency management office and look for assistance that could be brought in from elsewhere. A perfect example of that: I just had the opportunity to be in Cobourg, and the fire chief there was explaining that they had a fire in the plastics industry and quickly realized that they could not deal with it with the resources they had. In contact with the EMO, quickly foam was recruited from the Canadian Forces that was brought in from elsewhere. The local fire departments that surrounded this particular area were brought in to assist them, but it was all done through coordination of the province.

Again, this particular motion is very restrictive in nature. The government has trouble supporting it, so we'll be voting against it.

The Vice-Chair: Further debate? I will now put the question.

Mr. Dunlop: Recorded, please.

The Vice-Chair: Shall the motion carry?

Ayes

Dunlop, Elliot.

Nays

Arthurs, Berardinetti, Balkissoon, Leal, Oraziotti.

The Vice-Chair: The motion is lost.

We will now move on to motion 7a. Mr. Kormos.

Mr. Kormos: I move that section 7.0.2 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Same

"(8.1) The employer of a person who is providing services pursuant to an order made under paragraph 12 of subsection (4) shall reinstate the person to the position the person most recently held with the employer, if it still exists, or to a comparable position, if it does not, upon the person ceasing to provide services pursuant to the order."

This bill establishes some statutory right to maintain your job if you left your job for the interim period for the purpose of responding to an emergency.

1130

The Vice-Chair: Debate? Mr. Balkissoon.

Mr. Balkissoon: The government believes that the existing job protection scheme under the Employment Standards Act would apply automatically to any leave entitlement under subsection 50(1). The employee's seniority continues to accrue during leave in ESA, subsection 52(1). When the leave ends, the employee is entitled to reinstatement to the most recent position he or she held with the employer, if it still exists, or a comparable position if it does not. That's clear in ESA, subsection 53(1). On reinstatement, the employee is entitled to a rate of pay that is the greater of (a) the rate he or she earned in the most recent position he or she held with the employer, or (b) the rate that he or she would be earning had he or she continued working in that position instead of taking leave. This is clarified in ESA, subsection 53(3).

The employee would also have the protection of subsection 74(1) of the ESA. It provides that the employer shall not "intimidate, dismiss or otherwise penalize an employee" because he or she "(a)(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under part XIV" of the ESA.

So the government feels strongly that existing legislation deals with this particular issue, and this particular amendment is not necessary. We will be voting against it.

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

The Vice-Chair: Shall the motion carry? A recorded vote has been requested.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziotti.

The Vice-Chair: The motion is lost.

Motion 7b. Mr. Kormos.

Mr. Kormos: I move that section 7.0.2 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Reprisals prohibited

"(8.2) No employer or a person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so because the employee raises an urgent matter relating to a public health issue or to health care patient or employee safety during an emergency."

This is clearly whistle-blower protection. It's in the interests of everybody that people working in the course of health care during an emergency or any other time feel free to raise concerns about the safety of people receiving treatment, people delivering the treatment or of the general public. This will provide security for the person performing that laudable act. It is in response to concerns that were expressed about some of the employer responses during, amongst other things, the SARS crisis.

The Vice-Chair: Is there any debate? Mr. Balkissoon.

Mr. Balkissoon: The government's position is that the Occupational Health and Safety Act is fully preserved in Bill 56. This means that the Occupational Health and Safety Act and the protection it affords to the workers continues to apply to its full extent in a declared emergency. Section 50 of the act prohibits reprisals by an employer or a person acting on behalf of an employer against a worker where "the worker has acted in compliance with this act or the regulations or ... has sought the enforcement of this act or the regulations."

Moreover, as I stated earlier, the employee has the protection of subclause 74(1)(a)(viii) of the ESA. It provides that an employer shall not "intimidate, dismiss or otherwise penalize an employee" because he or she is eligible to take a leave, etc. Whistle-blower protection is also here, such as what is contained in this motion. It can be found also in subsection 74(1) of the Employment Standards Act. This particular motion—all of its concerns are addressed in other pieces of legislation that are preserved under Bill 56. The government feels that the issue is addressed, and therefore we cannot support this amendment.

The Vice-Chair: Further debate?

Mr. Dunlop: To the parliamentary assistant, that's not what I heard during the committee hearings. In fact, this is one of the areas I thought you would have made some major amendments to. It was my understanding—and maybe I'm incorrect in this—that particularly the Ontario Nurses' Association and groups like that—I thought they wanted some teeth in this bill that would allow them to feel more comfortable in their positions in case an emergency was brought forward.

That being said, I thought this was one of the weaknesses we found in SARS, that there was some sort of an intimidation factor that could have taken place, that people did not feel comfortable in their jobs; they felt they had to go to work at times. I was concerned with what would happen if—if I can just ask a question,

maybe you can answer it or someone can answer it—a person refused to go to work because they felt for the safety of their family. Can you answer that question?

Mr. Balkissoon: I will answer the question this way: If you look at what happened during SARS and what was presented to us by the nurses' association and, I believe, other groups, there was a clear indication that the Ministry of Labour inspectors did not respond to complaints. The joint safety and management committees that exist under the Occupational Health and Safety Act, the preservation of the employees' rights—the Ministry of Labour was not there. We believe that at that time it was just lack of resources of inspectors.

This government has done significant work in restoring the number of inspectors that are in the Ministry of Labour. As I stated before, the government has, if I could put it, moved mountains to build relationships with unionized employees. We believe that their rights are in existing legislation and that proper enforcement is necessary. Because we have augmented the inspectors we have in the Ministry of Labour, we hope that that situation does not repeat itself.

Mr. Dunlop: If I could just make one final comment: You're saying that because there was a lack of inspectors no one arrived on the job?

Mr. Balkissoon: That's what the nurses actually said when they were here.

Mr. Dunlop: That's not what I heard. So you're telling me now that if an emergency takes place, we will see all kinds of inspectors being able to visit the hospitals or visit areas of concern?

Mr. Balkissoon: I'm saying to you that the two acts that are in place, the Employment Standards Act and the Occupational Health and Safety Act, will be enforced.

Mr. Dunlop: Okay. I'll be supporting Mr. Kormos on this one for sure.

The Vice-Chair: Any further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

The Vice-Chair: Shall the motion carry? This is a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

The Vice-Chair: The motion is lost.

We will now move to motion 7c. Mr. Kormos.

Mr. Kormos: Yes, ma'am. I apologize for a typo in the wording of the motion: the omission of the word "be" in the second line of the amendment. When I read the motion, I'll be reading "resources are to 'be' obtained."

I move that section 7.0.2 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Obtaining necessary goods, services and resources

"(8.3) An order made under subsection (4) shall set out how necessary goods, services and resources are to be obtained in order to respond to the emergency and to comply with the order."

This requires the sort of specificity that has been requested with respect to the extraordinary powers being given the Lieutenant Governor in Council/Premier/emergency management czar.

1140

The Vice-Chair: Is there any debate?

Mr. Balkissoon: I believe motion 5—I stated clearly that we've revised clause 9 and clause 10 to deal with procurement and the use of goods and services. The explanation provided there serves well, and this motion just cannot be supported by the government.

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

The Vice-Chair: Shall this motion carry? This is a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

The Vice-Chair: The motion is lost.

We'll now move to motion 7d. Mr. Kormos.

Mr. Kormos: Yes, ma'am. I move that subsection 1(4) of the bill amended by adding the following section:

"Power of the Minister of Labour

"7.0.2.1 Even after an emergency is declared under section 7.0.1 or an order is made under subsection 7.0.2(4), the Minister of Labour retains responsibility over workplace health and safety and has the power and responsibility to enforce the Occupational Health and Safety Act and the regulations made under it despite an emergency being declared or an order being made."

This provides certainty as to an active role by the Ministry of Labour with respect to workplace health and safety after an emergency has been declared or when the workplace is subject to an order having been made.

The Vice-Chair: Debate?

Mr. Balkissoon: Section 7.0.6(5) clearly states that the Occupational Health and Safety Act prevails over Bill 56. Bill 56 does not override the Occupational Health and Safety Act, and therefore we don't see that it's necessary to have this particular amendment. As such, we can't support it.

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

The Vice-Chair: Shall the motion carry? This is a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Orazietti.

The Vice-Chair: The motion is lost.

We will now move to motion 7e. Mr. Kormos.

Mr. Kormos: I move that subsection 1(4) of the bill be amended by adding the following section:

“Order impacting the health and safety of employees
 “7.0.2.2(1) If an order made under this act may have an impact on the health and safety of the employees of a workplace affected by the order, the order shall require that the workplace’s joint health and safety committee be convened immediately after the order is made and that the committee meet regularly during the declared emergency.

“Same

“(2) If an order made under this act may have an impact on the health and safety of the employees of a workplace affected by the order, a copy of the order shall be provided to the director appointed under the Occupational Health and Safety Act and the order shall require that the Ministry of Labour consult with the workplace’s joint health and safety committee and that the Ministry of Labour investigate any possible violation of the Occupational Health and Safety Act or of the regulations made under it.”

Once again, this provides certainty as to workers being able to have some control over their health and safety in their workplaces.

The Vice-Chair: Debate?

Mr. Balkissoon: As I previously stated, Bill 56 does not override the Occupational Health and Safety Act. As such, all the requirements of the joint health and safety committee remain in effect during a declared emergency. The government’s position on this motion is that the amendment proposes requirements that go above and beyond what is contained in the Occupational Health and Safety Act. The Occupational Health and Safety Act already addresses this situation and applies to its full extent during a declared emergency. As such, we can’t support the amendment.

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

The Vice-Chair: Shall this motion carry? This is a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Orazietti.

The Vice-Chair: The motion is lost.

We will now move to motion 8. Mr. Balkissoon.

Mr. Balkissoon: I move that subsection 7.0.3(1) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by striking out “subsection 7.0.2(5)” and substituting “section 7.0.2.1.”

This is a bit of a technical amendment. It is one of several amendments that the government is proposing to separate the powers of the Premier.

The Vice-Chair: Debate? I will now put the question. All those in favour? Opposed? The motion carries.

We move to motion number 9.

Mr. Balkissoon: I move that subsection 7.0.3(2) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by striking out “subsections 7.0.2(4) and (5)” and substituting “subsection 7.0.2(4) and section 7.0.2.1.”

This is a technical amendment similar to what I said in motion number 8. It’s to separate the powers of the Premier.

The Vice-Chair: Debate? I will now put the question. All those in favour? Opposed? The motion carries.

We move to motion number 10.

Mr. Balkissoon: I move that subsection 1(4) of the bill be amended by striking out section 7.0.4 of the Emergency Management Act.

Subsection 7(1) of the existing EMA has a similar emergency order framework—

Interjection.

Mr. Balkissoon: Sorry?

Mr. Kormos: Take your victory and run.

Mr. Balkissoon: So we’re just rearranging things here to clarify it.

The Vice-Chair: I’ll now put the question. All those in favour of the motion? Opposed? The motion carries.

Motion number 11. Mr. Balkissoon.

Mr. Balkissoon: I move that subsection 1(4) of the bill be amended by striking out section 7.0.5 of the Emergency Management Act.

Same as motion number 10, same issue, and all of it is dealt with in motion 20.

The Vice-Chair: Debate? I will now put the question. All those in favour of the motion? Opposed? The motion carries.

Motion 11a. Mr. Kormos.

Mr. Kormos: I move that section 7.0.6 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

“Collective agreements preserved

“(6) A collective agreement that applies to parties in a workplace that is affected by an order made under this act remains in effect despite the order made under this act.”

This provides certainty as to what the government says is its intent: It ensures that collective bargaining agreements will prevail over emergency orders.

The Vice-Chair: Debate?

Mr. Balkissoon: The government can’t support this particular motion. The issues of collective agreements, we believe, should be dealt with at the lower level,

between the institution and the bargaining unit, and the emergency plans of that particular institution.

I would reiterate that this government has worked very hard with unions and build relationships. We hope that we could continue to work with them so that we could deal with the issues of collective bargaining through the emergency planning that is currently going on.

The Vice-Chair: Further debate?

Mr. Kormos: It is oh, so clear that the government wants the negotiation of collective bargaining agreements to take place at the local level, which is of course where it does take place, but that the breaching of collective bargaining agreements will take place at the provincial level. The violation of workers' rights has become transparent and obvious to any observer of these proceedings.

The Vice-Chair: Further debate?

Mr. Kormos: I'm asking for a recorded vote, please.

The Vice-Chair: I will now put the question. This is a recorded vote.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

The Chair: The motion is lost.

We move to motion number 12. Mr. Balkissoon.

Mr. Balkissoon: I move that subsection 1(4) of the bill be amended by striking out section 7.0.6 of the Emergency Management Act.

This is similar to motions 10 and 11, that were previously moved, and it's dealt with in motion 20 as an update.

1150

The Vice-Chair: Debate? All those in favour of the motion? Opposed? The motion is carried.

We move to motion 13. Mr. Balkissoon.

Mr. Balkissoon: I move that section 7.0.7 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by striking out "under this act" and substituting "under subsection 7.0.2 (4)."

This amendment is necessary because it's a change to the administrative enforcement scheme in section 7.0.7 of Bill 56 to clarify that it only applies to cabinet orders and not the Premier's orders. The amendment is intended to distinguish between the Premier's powers and cabinet powers.

The Vice-Chair: Debate? All those in favour of the motion? Opposed? The motion carries.

Motion 13a. Mr. Kormos.

Mr. Kormos: I move that section 7.0.8 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

"Notice to bargaining agents

"(2) During an emergency, the Premier, or a minister to whom the Premier delegates the responsibility, shall,

"(a) notify all bargaining agents that represent employees in a workplace affected by an order made under this act that the Occupational Health and Safety Act remains in effect during the emergency;

"(b) ensure that notices are posted in a workplace affected by an order made under this act informing employees that the Occupational Health and Safety Act remains in effect during the emergency; and

"(c) regularly consult with employees in a workplace affected by an order made under this act and with their bargaining agents and shall ensure that such employees and bargaining agents are able to report on their concerns during the emergency."

A right without notification as to that right becomes valueless. This ensures that there is clear notice to workers in workplaces affected by orders that the Occupational Health and Safety Act remains in effect and ensures that there are lines of communication maintained.

The Vice-Chair: Debate?

Mr. Balkissoon: The government can't support this particular amendment because Bill 56 expressly preserves the Occupational Health and Safety Act. This is one statute that is preserved in this manner. The government will work with the public and emergency workers to ensure that there's an understanding of the legislation and clear expectations of persons in an emergency, including an understanding that the Occupational Health and Safety Act is fully preserved. Clause (2)(a) would impose significant operational issues for the Premier or the minister who is delegated this power. Moreover, it only addresses unionized employees. Most employees in Ontario are non-unionized. So, being very specific, it actually creates a lot of problems for the government. Employees and employers are also encouraged to address these types of issues, as I stated previously, in their local emergency plans and in their collective bargaining process. With our track record, we hope we could work with all of them on good relations to make sure this happens.

The Vice-Chair: Further debate? Mr. Kormos.

Mr. Kormos: Are you referring to the Liberal track record of broken promises, Mr. Balkissoon?

The Vice-Chair: Further debate? I will now put the question.

Mr. Kormos: A recorded vote, please.

Ayes

Dunlop, Elliott, Kormos.

Nays

Arthurs, Balkissoon, Berardinetti, Leal, Oraziatti.

The Vice-Chair: The motion is lost.

Motion 14. Mr. Berardinetti.

Mr. Berardinetti: I move that the French version of the bill be amended by making the following changes:

(1) Strike out “ou ordonnances” in subsection 7.0.10(1) of the Emergency Management Act, as set out in subsection 1(4) of the bill, and substitute “, arrêtés ou ordonnances.”

(2) Strike out “d’un décret ou d’une ordonnance” in subsection 7.0.10(3) of the Emergency Management Act, as set out in subsection 1(4) of the bill, and substitute “d’un décret, d’un arrêté ou d’une ordonnance.”

(3) Strike out “d’un décret ou d’une ordonnance” in subsection 7.0.10(4) of the Emergency Management Act, as set out in subsection 1(4) of the bill, and substitute “d’un décret, d’un arrêté ou d’une ordonnance.”

(4)(i) Strike out “à un décret ou à une ordonnance” in subsection 7.0.13(1) of the Emergency Management Act in the portion before clause (a), as set out in subsection 1(4) of the bill, and substitute “à un décret, à un arrêté ou à une ordonnance,” and

(ii) Strike out “un tel décret ou une telle ordonnance” in subsection 7.0.13(1) of the Emergency Management Act in the portion before clause (a), as set out in subsection 1(4) of the bill, and substitute “un tel décret, un tel arrêté ou une telle ordonnance.”

(5) Strike out “d’un décret ou d’une ordonnance” in subsection 13.1(3) of the Emergency Management Act, as set out in subsection 1(7) of the bill, and substitute “d’un décret, d’un arrêté ou d’une ordonnance.”

The Vice-Chair: Debate?

Mr. Kormos: Why the change of heart?

Mr. Balkissoon: I believe this was a technical change because of the French interpretation of orders. It was requested by Legislative Assembly counsel.

Mr. Kormos: I really think the public is interested in these things. Why are we adding situations? Help us with that, Mr. Balkissoon, please, as the parliamentary assistant.

Mr. Balkissoon: As I stated, I believe that this particular request was made because of the interpretation of orders in French and the words that were used in the original bill, and it was legislative counsel that suggested the changes.

The Vice-Chair: I’m going to ask legislative counsel to address this as well.

Mr. Albert Nigro: For the record, I’m Albert Nigro, from the office of legislative counsel. French, as a matter of legal language and just language in general, is much more precise than English. For the word “order,” which is a word that we use in English, there are three equivalents in French, depending on who makes the order. In the original French version of the bill, in certain places we missed one of the equivalents. All we’re doing here is basically adding the term “arrêté,” which is an order made by a minister, including the Premier.

Mr. Kormos: So it’s the addition of the ministerial order to the types of orders. Mr. Balkissoon, you needn’t have been embarrassed about that.

Mr. Balkissoon: I’m not an expert in languages, I’ll admit.

Mr. Kormos: We understand the oversight. We’re going to support this.

The Vice-Chair: Further debate? I’m now going to put the question. Shall the motion carry? All those in favour? Opposed? The motion carries.

We move on to motion number 15. Mr. Balkissoon.

Mr. Balkissoon: I move,

(a) that the English version of subsection 7.0.11(1) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by striking out “the declaration of a state of emergency” and substituting “the declaration of emergency”;

(b) that the English version of subsection 7.0.11(2) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by striking out “the declaration of a state of emergency” and substituting “the declaration of emergency”; and—here it’s going to be difficult—

(c) that the French version of subsection 7.0.11(2) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by striking out “tout décret ou toute ordonnance” and substituting “tout décret, tout arrêté ou toute ordonnance.”

I think I did pretty good.

The Vice-Chair: I think you did fine.

Mr. Balkissoon: This is just to have consistent language. We’re just changing “state of emergency” to read “declaration of emergency” so it’s consistent throughout the bill.

The Vice-Chair: Debate?

Mr. Kormos: I looked back at 7.0.1, Mr. Balkissoon, because there, an order declares that an emergency exists. I trust, when you talk about the effort to be consistent, that’s what you’re referring to.

Mr. Balkissoon: We’re removing the word “state.”

Mr. Kormos: I understand, because going back to 7.0.1—

Mr. Balkissoon: It’s 7.0.11.

Mr. Kormos: No, 7.0.1, subsection 1. The power of the Premier is to declare that an emergency exists.

Mr. Balkissoon: So it’s a declaration of emergency.

Mr. Kormos: To declare that an emergency exists, but once that happens, isn’t there a state of emergency? You understand what I’m saying? The state’s status flows from the declaration. I know what you’re trying to do, but when you’re disallowing, you’re terminating the state of emergency, right? I’m wondering if you really want to say “disallow the declaration of emergency,” where you disallow the declaration, or are you terminating the state of emergency?

Mr. Balkissoon: My interpretation would be that we’re terminating the declaration of the emergency—

Mr. Kormos: Okay. I’m not going to belabour the point.

Mr. Balkissoon: —but a ministry lawyer might want to clarify it. I’d be happy to bring the ministry lawyer to clarify.

The Vice-Chair: Does ministry staff want to respond to that, please? Would you please identify yourself for the record?

Mr. Jay Lipman: Jay Lipman, counsel, the Ministry of Community Safety and Correctional Services.

This is the one provision, 7.0.11, where the phrase “state of emergency” is used. In all the other sections in the bill, they refer to simply the “declaration of emergency.” The proposed motion would remove the reference to “state of emergency” and would just be talking about “declaration of emergency” as we do in all the other provisions in the legislation.

Mr. Kormos: I appreciate that and I thank you for that, but is the proper language to be used, then, once a declaration of emergency has been made—I’m being deadly serious. Are we then in a state of emergency, “state” as in status?

Mr. Lipman: Not for the purposes of this bill. Like I say, it might make sense to use that term if we used it consistently throughout the bill, but to use it simply in one section, I think, was basically an oversight.

Mr. Kormos: Or drafting by committee.

Mr. Lipman: I’m not sure what the cause was.

Mr. Kormos: Thank you.

The Vice-Chair: Further debate?

I will now put the question: Shall this motion carry? All those in favour? Opposed? The motion carries.

Seeing that it’s past noon, I want to first of all say thank you very much to all members of the committee and to the support staff. This is the first time I’ve ever chaired a clause-by-clause, and I want to recognize everyone’s kindness.

I also want to apologize to Mr. Dunlop. I used his first name when I first started, and I attribute that to my inexperience. It was not meant to be a slight or sign of disrespect.

Mr. Kormos: I attribute that to a warm relationship.

The Vice-Chair: Thank you very much, Mr. Kormos. The committee is now adjourned.

The committee adjourned at 1204.

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Ministry of Community Safety and Correctional Services

Clerk / Greffière

Ms. Anne Stokes

Staff / Personnel

Mr. Albert Nigro, legislative counsel



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Journal des débats (Hansard)

Jeudi 1^{er} juin 2006



**Standing committee on
justice policy**

**Comité permanent
de la justice**

Emergency Management Statute
Law Amendment Act, 2006

Loi de 2006 modifiant des lois
en ce qui a trait à la gestion
des situations d'urgence

Chair: Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Thursday 1 June 2006

Jeudi 1^{er} juin 2006*The committee met at 1007 in room 228.*EMERGENCY MANAGEMENT STATUTE
LAW AMENDMENT ACT, 2006
LOI DE 2006 MODIFIANT DES LOIS
EN CE QUI A TRAIT À LA GESTION
DES SITUATIONS D'URGENCE

Consideration of Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997 / Projet de loi 56, Loi modifiant la Loi sur la gestion des situations d'urgence, la Loi de 2000 sur les normes d'emploi et la Loi de 1997 sur la sécurité professionnelle et l'assurance contre les accidents du travail.

The Chair (Mr. Vic Dhillon): Good morning. Welcome to the meeting of the standing committee on justice policy. The order of business today is Bill 56, An Act to amend the Emergency Management Act, the Employment Standards Act, 2000 and the Workplace Safety and Insurance Act, 1997. We'll continue the clause-by-clause consideration of Bill 56. I believe we finished in section 1 and we'll continue with page 16, with a government motion. Mr. Balkissoon.

Mr. Bas Balkissoon (Scarborough–Rouge River): I move that subsection 7.0.12(2) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

“Content of report

“(2) The report of the Premier shall include information,

“(a) in respect of making any orders under subsection 7.0.2(4) and an explanation of how the order met the criteria for making an order under subsection 7.0.2(2) and how the order satisfied the limitations set out in subsection 7.0.2(3); and

“(b) in respect of making any orders under subsection 7.0.2.1(2) and an explanation as to why he or she considered it necessary to make the order.”

Bill 56 requires the Premier to report to the assembly—

Mr. Peter Kormos (Niagara Centre): I understand the purpose of the motion.

Mr. Balkissoon: Okay, super.

The Chair: All those in favour? Opposed? Carried. Next is a government motion on page 17.

Mr. Balkissoon: I move that subsection 7.0.12(4) of the Emergency Management Act, as set out in subsection 1(4) of the bill, be struck out and the following substituted:

“Commissioner’s report

“(4) If the Commissioner of Emergency Management makes any orders under subsection 7.0.2(4) or 7.0.2.1(2), he or she shall, within 90 days after the termination of an emergency declared under subsection 7.0.1(1), make a report to the Premier in respect of the orders and the Premier shall include it in the report required by subsection (1).”

This is just to clear up a problem of timing. The commissioner’s report and the Premier’s report were both due in 90 days in the past. This allows the Premier to receive the commissioner’s report and include it in his report.

The Chair: Thank you. Any debate? All those in favour? Opposed? Carried.

I believe we have an agreement to skip over page 18?

Mr. Kormos: The Conservative motion next: On behalf of the Conservative caucus, I ask that it be held down till later this morning.

The Chair: Okay. We’ll proceed to the next government motion on page 19.

Mr. Balkissoon: I move that section 7.0.13 of the Emergency Management Act, as set out in subsection 1(4) of the bill, be amended by adding the following subsection:

“Exception

“(4) No person shall be charged with an offence under subsection (1) for failing to comply with or interference or obstruction in respect of an order that is retroactive to a date that is specified in the order, if the failure to comply, interference or obstruction is in respect of conduct that occurred before the order was made but is after the retroactive date specified in the order.”

This motion is as it reads. It just gives protection to someone who acted before an order was issued. If the order was retroactive, it just covers that period of retroactivity for further protection.

The Chair: Any debate? All those in favour? Opposed? Carried.

Mr. Kormos: Chair, I note that the next government motion is a rather substantive one. I wonder if we might have a five-minute recess before that one is moved.

The Chair: Is there any opposition to a five-minute recess? Five-minute recess.

The committee recessed from 1012 to 1021.

The Chair: We'll be recessed until 10:45.

The committee recessed from 1021 to 1045.

The Chair: This committee is called back to order. We'll be resuming the government motion on page—

Mr. Balkissoon: Maybe we can go back and do 18?

The Chair: Right. My apologies. We'll go back to number 18. It's a PC motion. Mrs. Elliott.

Mrs. Christine Elliott (Whitby–Ajax): Thank you, Mr. Chair. I apologize for being delayed this morning. I appreciate the committee's accommodation. With respect to number 18, we won't be proceeding with that motion.

The Chair: Thank you. The next one is a government motion, page 20.

Mr. Balkissoon: I move that subsection 1(5) of the bill be struck out and the following substituted:

"(5) Section 7.1 of the act is repealed and the following substituted:

"Orders in emergency

"Purpose

"7.1(1) The purpose of this section is to authorize the Lieutenant Governor in Council to make appropriate orders when, in the opinion of the Lieutenant Governor in Council, victims of an emergency or other persons affected by an emergency need greater services, benefits or compensation than the law of Ontario provides or may be prejudiced by the operation of the law of Ontario.

"Order

"(2) If the conditions set out in subsection (3) are satisfied, the Lieutenant Governor in Council may, by order made on the recommendation of the Attorney General, but only if the Lieutenant Governor in Council is of the opinion described in subsection (1),

"(a) temporarily suspend the operation of a provision of a statute, regulation, rule, bylaw or order of the government of Ontario; and

"(b) if it is appropriate to do so, set out a replacement provision to be in effect during the temporary suspension period only.

"Conditions

"(3) The conditions referred to in subsection (2) are:

"1. A declaration has been made under section 7.0.1.

"2. The provision,

"i. governs services, benefits or compensation, including,

"A. fixing maximum amounts,

"B. establishing eligibility requirements,

"C. requiring that something be proved or supplied before services, benefits or compensation become available,

"D. restricting how often a service or benefit may be provided or a payment may be made in a given time period,

"E. restricting the duration of services, benefits or compensation or the time period during which they may be provided,

"ii. establishes a limitation period or a period of time within which a step must be taken in a proceeding, or

"iii. requires the payment of fees in respect of a proceeding or in connection with anything done in the administration of justice.

"3. In the opinion of the Lieutenant Governor in Council, the order would facilitate providing assistance to victims of the emergency or would otherwise help victims or other persons to deal with the emergency and its aftermath.

"Maximum period, renewals and new orders

"(4) The period of temporary suspension under an order shall not exceed 90 days, but the Lieutenant Governor in Council may,

"(a) before the end of the period of temporary suspension, review the order and, if the conditions set out in subsection (3) continue to apply, make an order renewing the original order for a further period of temporary suspension not exceeding 90 days;

"(b) at any time, make a new order under subsection (2) for a further period of temporary suspension not exceeding 90 days.

"Further renewals

"(5) An order that has previously been renewed under clause (4)(a) may be renewed again, and in that case clause (4)(a) applies with necessary modifications.

1050

"Effect of temporary suspension: time period

"(6) If a provision establishing a limitation period or a period of time within which a step must be taken in a proceeding is temporarily suspended by the order and the order does not provide for a replacement limitation period or period of time, the limitation period or period of time resumes running on the date on which the temporary suspension ends and the temporary suspension period shall not be counted.

"Effect of temporary suspension: fee

"(7) If a provision requiring the payment of a fee is temporarily suspended by the order and the order does not provide for a replacement fee, no fee is payable at any time with respect to things done during the temporary suspension period.

"Restriction

"(8) This section does not authorize,

"(a) making any reduction in respect of services, benefits or compensation;

"(b) shortening a limitation period or a period of time within which a step must be taken in a proceeding; or

"(c) increasing the amount of a fee.

"Orders, general

"Commencement

"7.2(1) An order made under subsection 7.0.2(4) or 7.1(2),

"(a) takes effect immediately upon its making; or

"(b) if it so provides, may be retroactive to a date specified in the order.

"Notice

"(2) Subsection 5(3) of the Regulations Act does not apply to an order made under subsection 7.0.2(4), 7.0.2.1(2) or 7.1(2), but the Lieutenant Governor in Council shall take steps to publish the order in order to

bring it to the attention of affected persons pending publication under the Regulations Act.

“General or specific

“(3) An order made under subsection 7.0.2(4) or 7.1(2) may be general or specific in its application.

“Conflict

“(4) In the event of conflict between an order made under subsection 7.0.2(4) or 7.1(2) and any statute, regulation, rule, bylaw, other order or instrument of a legislative nature, including a licence or approval, made or issued under a statute or regulation, the order made under subsection 7.0.2(4) or 7.1(2) prevails unless the statute, regulation, rule, bylaw, other order or instrument of a legislative nature specifically provides that it is to apply despite this act.

“Chief medical officer of health

“(5) Except to the extent that there is a conflict with an order made under subsection 7.0.2(4), nothing in this act shall be construed as abrogating or derogating from any of the powers of the chief medical officer of health as defined in subsection 1(1) of the Health Protection and Promotion Act.

“Limitation

“(6) Nothing in this act shall be construed or applied so as to confer any power to make orders altering the provisions of this act.

“Same

“(7) Nothing in this act affects the rights of a person to bring an application for the judicial review of any act or failure to act under this act.

“Occupational Health and Safety Act

“(8) Despite subsection (4), in the event of a conflict between this act or an order made under subsection 7.0.2(4) and the Occupational Health and Safety Act or a regulation made under it, the Occupational Health and Safety Act or the regulation made under it prevails.”

This is a pretty hefty amendment. It's more of a cleanup process to organize the bill. It rewrites section 7.2 to clarify the override clause with regard to certificates and licences. It rewrites the existing EMA, section 7.1, which has a scheme of emergency orders to be made by cabinet. It also does a little bit of a cleanup where some places of the bill have orders in council and some have orders, and it specifies now that they are orders, just to provide consistency throughout the entire Bill 56.

The Chair: Debate?

Mr. Kormos: Only a Liberal could describe a four-page amendment which is in effect the war measures provision of this bill as but housekeeping and cleanup. What this bill does is allow the Lieutenant Governor in Council, effectively the Premier and cabinet, in private, in secret, behind closed doors, without public scrutiny, without press scrutiny, without a record—no Hansard—to suspend the operation of laws in the province of Ontario for up 90 days. That's in addition to the 14 listed powers that are earlier in the bill.

New Democrats don't buy into that. That's not what we need in this province for emergency management. We need front-line resources, including staffing. We need

respect for those people and we need for them to be involved in the planning process. We will be voting against this and I'll be calling for a recorded vote.

The Chair: Any further debate? If there's no further debate, I'll put the question.

Mr. Kormos: Recorded vote.

Ayes

Balkissoon, Berardinetti, Van Bommel.

Nays

Elliott, Kormos.

The Chair: Carried.

Next is an NDP motion, page 21a.

Mr. Kormos: Do you prefer that before 21?

The Chair: I'm sorry.

Mr. Kormos: It's up to you. I'm in your hands.

The Chair: A government motion, page 21. Thank you.

Mr. Balkissoon: I move that subsection 11(1) of the Emergency Management Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

“Protection from action

“11(1) No action or other proceeding lies or shall be instituted against a member of council, an employee of a municipality, an employee of a local services board, an employee of a district social services administration board, a minister of the crown, a crown employee or any other individual acting pursuant to this act or an order made under this act for any act done in good faith in the exercise or performance or the intended exercise or performance of any power or duty under this act or an order under this act or for neglect or default in the good faith exercise or performance of such a power or duty.”

This, as it reads, just provides protections for individuals against liability. It includes municipalities, local boards and DSSABs because they come under the description of a municipality earlier in the bill.

The Chair: Any debate? No debate. All those in favour? Opposed? Carried.

Mr. Kormos.

Mr. Kormos: I move that section 11 of the Emergency Management Act, as set out in subsection 1(6) of the bill, be amended by adding the following subsection:

“Indemnification of employees

“(3.1) The crown or, in the case of an employee of a municipality, the municipality, or in the case of any other employer, the employer, in accordance with such guidelines as may be approved by the Lieutenant Governor in Council, shall indemnify an employee acting pursuant to this act or an order made under this act for reasonable legal costs incurred,

“(a) in the defence of a civil action, if the employee is not found to be liable; and

“(b) in respect of any other proceeding in the which the employee’s manner of execution of the duties of his or her employment was an issue, if the employee is found to have acted in good faith.”

It’s not enough to merely have the indemnification section that the government amended in its last motion, because that’s meaningless to an employee who can raise the defences that are contained in section 11 of acting in good faith, but it costs them \$20,000, \$30,000, \$40,000, or \$50,000 in legal fees in a court action to defend themselves. Sure, they’ll be found not liable if they acted in good faith, but they’ll have coughed up—even with the recovery of costs by virtue of court-ordered costs, you know, Chair, that that doesn’t mean all of your costs. It’s in the very rarest of circumstances that anything close to all of one’s real legal costs are covered in an award of costs.

This is a very reasonable proposal. It says that, yes, you give the employees that defence but then you also make sure it’s meaningful by ensuring that they have the capacity to offer up that defence should they be prosecuted or sued.

The Chair: Any debate?

Mr. Balkissoon: The government’s position is that subsection 11(1) provides the protection from personal liability as long as the person is acting in good faith in the performance of their duties under this act. That protection specifically includes barring actions and proceedings; therefore, civil action cannot be brought against an individual, in accordance with this subsection. The government will not be supporting this amendment.

1100

The Chair: Any further debate?

Mr. Kormos: You have to plead that defence. Do you understand what I’m saying? If somebody sues you—they’ve got the sheriff knocking on your door; they serve you with a pile of papers this thick—you’ve got to go to a lawyer. You’ve got to pay that lawyer his or her reasonable fee. His or her reasonable fee is going to amount to thousands and thousands of dollars, even in terms of preparing a statement of defence, those initial pleadings.

I supported—everybody here supported—the indemnification section, the defence. But just because you have a defence doesn’t mean that nobody can sue you. People sue each other every day when there are reasonable defences to the action. That’s why you have lawsuits. You’ve got a statement of claim—I hope I’ve got the current language right—and you’ve got a statement of defence. Then you do all the process. This is to make sure that employees—not the folks making \$85,000 and \$95,000 a year like MPPs at Queen’s Park, or parliamentary assistants with their \$12,000 or \$13,000 stipend in addition to the \$86,000 or so that’s their base salary; we’re not talking about those people. We’re talking about people making \$30,000 and \$35,000 and \$40,000 a year, raising families. Those are municipal workers; those are civil servants. Those are the people who are going to find themselves at the receiving end of lawsuits. It’s not

enough just to give them a defence. We endorse that. You’ve got to give them the capacity to plead that defence, which means paying their legal costs.

I’m asking for a recorded vote on this one, sir.

The Chair: Any further debate?

Mrs. Elliott: I agree with Mr. Kormos that the indemnity provision does protect you if you’re found to be acting in good faith in the performance of your duties, but you may be called upon to prove that, and you will incur substantial legal costs if that’s the case.

The Chair: Thank you. All those in favour?

Mr. Balkissoon.

Mr. Balkissoon: I hear what the opposition party and the third party are saying, but from my personal experience in being in the municipal world for a long time, municipal employees have indemnification as long as they are performing their duties in good faith as directed by the municipal policies and procedures, etc. The same would apply for agencies, boards and commissions, etc. This is why we disagree with this particular motion. We also have the previous clause that we dealt with—no, we’re going to deal with it soon—number 25, in which you can apply to the Lieutenant Governor in Council, if there’s an extraordinary case, for covering some expenses that may or may not arise.

We believe that the agencies and the municipalities—that people who are performing the emergency duty are indemnified by their particular organization. But if there’s an extraordinary case, you can apply to cabinet.

The Chair: Thank you. Any further debate?

Mr. Kormos has asked for a recorded vote.

Ayes

Elliott, Kormos.

Nays

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: That’s lost.

Next is a government motion.

Mr. Balkissoon: I move that section 11 of the Emergency Management Act, as set out in subsection 1(6) of the bill, be amended by adding the following subsection:

“Application of subs. (1)

“(3.1) In the case of an order that is made retroactive to a date specified in the order, subsection (1) applies to an individual referred to in that subsection in respect of any act or any neglect or default that occurs before the order is made but on or after the date specified in the order.”

This amendment is again made to provide retroactivity, and we think it should be supported.

The Chair: Any debate? No debate. All those in favour? Opposed? Carried.

Mr. Balkissoon.

Mr. Balkissoon: I move that the definition of “municipality” in subsection 11(4) of the Emergency Management Act, as set out in subsection 1(6) of the bill, be struck out and the following substituted:

“‘municipality’ includes a local board of a municipality; (‘municipalité’).”

This is a required amendment to remove the—

Mr. Kormos: We agree with it.

Mr. Balkissoon: Okay.

The Chair: All those in favour? Carried.

Mr. Balkissoon: I move that subsection 13.1(1) of the Emergency Management Act, as set out in subsection 1(7) of the bill, be amended by striking out “an order made under this act” and substituting “an order made under subsection 7.0.2(4).”

This is another provision that supports the distinction between the Premier’s orders and cabinet orders so that they could be kept separate. It clarifies that exemptions from the Expropriations Act, provided in section 13 of the bill, will only apply to cabinet orders and not Premier’s orders.

Mr. Kormos: What a relief. So cabinet can expropriate, confiscate property without compensation but the Premier can’t. Wow, I feel so much better now. I can go to bed happy tonight.

I’m going to oppose the amendment because—let’s be very careful. The section of the act that it’s amending is an incredibly offensive one. Nothing done under this act or under an order under this act constitutes an expropriation, and there is no compensation for the loss, including a taking of any real or personal property. Wow: except the discretionary, arbitrary, behind-closed-door power of the Lieutenant Governor in Council—that’s subsection (3) of that section. This is incredibly offensive stuff. This is the stuff that takes place in totalitarian regimes. It does. This is an incredible affront where the determination of any compensation isn’t done by a public tribunal, like a court under the Expropriations Act, where the rule of law prevails and where there’s public oversight, but behind closed doors, in the secrecy, in the darkness, in the solitude of a cabinet room. Very offensive stuff.

As I say, this is the stuff you expect out of two-bit dictatorship regimes. The power of the Lieutenant Governor in Council to suspend the rule of law for up to 90 days and then renew it without scrutiny of Parliament is a dangerous thing. This is just outright offensive, and I’m opposed to the amendment, because we will of course have a chance to vote on subsection (7), but I’ll be voting against section 1 in any event.

The Chair: Any further debate?

Mr. Kormos: Recorded vote, please.

Mr. Balkissoon: I would like to just remind the member opposite that we are dealing here with an emergency, and there will be times in an emergency, just to protect Ontarians, that we would require to use this, but it would be for the period of the emergency. There are other parts of the act that talk about that if land or whatever is commandeered, there will be a method of

applying for compensation or the government is obligated to do restoration if necessary.

So it’s a state where you’re in an emergency, you have to act, and you don’t have time to follow the processes that he’s talking about. This is why we, the government, require this. If not, you’ll hamstring the government’s ability to act during an emergency.

Mr. Kormos: That’s condescending pap, and again, it adds to the offensiveness of the whole direction that the government is taking here. The member should read the bill and understand what the compensation provisions are in subsection (3) of this very section that it purports to amend now: If a person suffers loss, including the taking of any real or personal property—so, clearly, the extraordinary powers contemplated include the taking of real and personal property—the determination of compensation shall be the Lieutenant Governor in Council, with such guidelines as may be approved by the Lieutenant Governor in Council. This is after the fact. This isn’t during the course of an emergency; this is after the emergency presumably is resolved or addressed.

1110

What does this government have against our public court system that it won’t permit courts, judicial authorities, to determine the quantum of compensation; that it won’t allow a party who has been deprived of real or personal property, who’s had it seized from him, confiscated, to make arguments in a public forum about the value of that property or the extent of his or her loss? This has nothing to do with emergency management. This has nothing whatsoever to do with emergency management.

The argument that the government should be making, and we dispute that, is that the extraordinary powers, 1 through 14, have to do with emergency management. This says that there will be no compensation determined in a public forum, in a court, pursuant to, amongst other things, the Expropriations Act.

This is the stuff of, again, two-bit totalitarian dictatorships.

The Chair: Any further debate?

Mr. Kormos: A recorded vote, please.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: It’s lost.

Next is a PC motion. I understand we have a replacement.

Mrs. Elliott: We do. I believe everyone has a copy of the amended version of the amendment.

I move that section 13.1 of the Emergency Management Act, as set out in subsection 1(7) of the bill, be amended by adding the following section:

“Compensation for municipalities

“(4) Without limiting the generality of subsection (2), the Lieutenant Governor in Council may by order authorize the payment of the costs incurred by a municipality in respect of an order made under this act out of funds appropriated by the assembly.”

This is simply to clarify that for any costs incurred by the municipality, there may be a claim for compensation.

The Chair: Any debate?

Mr. Kormos: New Democrats support this. This is a modest effort. The Conservative caucus has drafted it in such a way that it is consistent with the other sections of the act in that it's determined by the Lieutenant Governor in Council. I obviously have concerns about that, but clearly the interest that the Conservatives had when they drafted it that way was to make it palatable to the government so that the government would have no reason whatsoever for rejecting it.

This is cost incurred by a municipality, and we've already learned that the government was very careful to vote down the sections that were moved by the Conservatives yesterday—Mr. Dunlop, amongst others—that would permit municipalities to exercise some control over their own resources so as not to have resources depleted, putting that municipality at risk. The government voted that down so that the provincial government, the Premier—sitting in his backroom with his high-priced, unelected consultants—can call the shots, including forcing already hard-hit, already cash-strapped municipalities to utilize their resources.

When you're in small-town Ontario, whether it's Whitby–Ajax or down in Niagara, one major police investigation—a horrific crime, for instance—can generate hundreds of thousands, millions, of dollars in policing costs for small-town Ontario in the course of one fiscal year. One extraordinary event that requires utilizing firefighting services, paramedics, emergency personnel—and I'm talking about crises that happen that aren't even within the scope of provincial emergencies—hits these communities hard. We're not the communities of scale like Toronto. They put a huge dent. This is a provision whereby those municipalities can come to the government and seek some relief when they've been called upon—no, they've been ordered—to utilize scarce resources.

I support the motion.

The Chair: Any further debate?

Mr. Lorenzo Berardinetti (Scarborough Southwest): The government will be supporting this motion.

I just wanted to congratulate the parliamentary assistant, Ms. Elliott and Mr. Dunlop for working on this together to get a revised motion that's acceptable to all of us—including Mr. Kormos, it appears. So we will be in support of it, and ask for a recorded vote as well.

Mr. Kormos: One moment.

The Chair: Mr. Kormos.

Mr. Kormos: And for the life of me, I don't know how Mr. Balkissoon can suggest that this motion is the one that deals with the concerns raised by the incurring

of legal costs by municipal employees. He actually suggested that motion number 25—this motion; he suggested, when he ordered his fellow travellers over there to vote down the motion that would provide compensation for municipal employees who get themselves sued and pulled into court, that somehow Bill 25 addresses that. It's the farthest thing in the world from addressing that. Even you understand that, Chair.

The Chair: Further debate?

Mr. Balkissoon: Just a quick comment: I referred to 25 as part of the larger clause in the bill. There is the opportunity to apply to cabinet, and the bill provides it.

The Chair: Seeing no further debate, all those in favour?

Mr. Berardinetti: Recorded vote, please.

Ayes

Balkissoon, Berardinetti, Elliott, Kormos, Leal, Van Bommel.

The Chair: I declare that carried.

Next is an NDP motion.

Mr. Kormos: I move that section 13.1 of the Emergency Management Act, as set out in subsection 1(7) of the bill, be amended by adding the following subsection:

“Compensation of employees

“(4) The Lieutenant Governor in Council,

“(a) shall, in consultation with employees most likely to be affected during an emergency and their bargaining agents, develop guidelines on the compensation of employees who expose themselves to serious harm or serious financial losses by continuing their employment during a declared emergency or by accepting any restriction on their employment because of the emergency;

“(b) shall publish these guidelines and any updates to them; and”

A typographical error, I apologize.

“(c) shall, after an emergency is declared, ensure that these guidelines are communicated to employees and”—another typo: bargaining—“their bargaining agents at a workplace affected by an order made under this act.”

It's self-explanatory. This is all about communication. It's all about openness. It's all about transparency. It's all about recognizing that in the event of an emergency public sector workers, first and foremost, are called upon and readily expose themselves to risk and harm and similarly deprive their families—look, you've got the scenario. Poor folks in southern Louisiana and the Florida panhandle: You had the phenomenon of police officers down in New Orleans, for instance, being homeless because they themselves were victims of the crisis, the flooding, the breaking of the dikes and levees. This is the sort of thing that this amendment contemplates.

The Chair: Any debate?

Mr. Balkissoon: This amendment would appear to apply to employees represented by a bargaining agent. It would be very difficult to expressly address compensation for certain groups and not others. As I stated

yesterday, there are many employees who are involved in emergencies who are not part of a bargaining group. We believe that the order-making power in the bill pertaining to compensation is sufficiently broad and open for application to the Lieutenant Governor in Council.

The other comment I could add to this is, as I stated continuously yesterday, every institution, every municipality out there will have an emergency plan; therefore, the bargaining units can work with their employer and work out what they would like to see in that emergency plan with regard to compensation. They could also bargain for it in their collective bargaining agreement.

We don't believe that this motion should be supported and be part of the bill because of those problems that I identified. We will not be supporting it.

Mr. Kormos: This is the second day in a row that the parliamentary assistant states that whole bunches of these public sector workers are not organized into collective bargaining units, as members of a trade union. Sid Ryan and Leah Casselman phoned me last night asking, please, for Mr. Balkissoon to tell them which of these public sector workers in health and municipal levels aren't organized, because they're eager to sign them up with CUPE or OPSEU cards.

I hear you, now day two, Mr. Balkissoon, talking about significant numbers of these front-line emergency workers who don't belong to unions. Surely, you'll join Leah, Sid and me in helping them organize, won't you?

Mr. Berardinetti: As long as you help Bob Rae. Why don't you help Bob Rae?

Mr. Kormos: Why should I support a Liberal Prime Ministerial—

Mr. Berardinetti: A former NDP Premier.

Mr. Kormos: He's yours now, Lorenzo.

1120

The Chair: We're not here to discuss that.

Interjections.

Mr. Kormos: Whoa, somebody—George does. Greg does; the Minister of Finance likes Bob Rae.

The Chair: Any further debate? Seeing none—

Mr. Kormos: What have you got against Greg Sorbara and George Smitherman, Lorenzo? That's a career-limiting move.

The Chair: Order.

Mr. Berardinetti: What have you got against Bob Rae? He was your Premier.

Mr. Kormos: What have I got against Bob Rae? How he has been a Liberal.

The Chair: Mr. Berardinetti.

Mr. Kormos: A typical Liberal: He's unprincipled; he'll promise anything to get elected. He'll lie, cheat and steal his way to a position of leadership.

The Chair: Mr. Kormos. I'm warning you.

Interjection.

The Chair: Mr. Kormos, that's not why we're here. Any further debate?

Mr. Kormos: I guess Bob is really excited that you're on his team.

The Chair: Mr. Kormos, we're not here to talk about your ex-boss.

Any further debate? Seeing none—

Mr. Kormos: Recorded vote, please.

Ayes

Elliott, Kormos.

Nays

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: It's lost. Shall section 1, as amended, carry?

Mr. Kormos: Recorded vote. We're not going to debate it?

The Chair: All those in favour? I'm sorry, is there any debate on section 1? None.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: That's carried.

Section 2: A government motion. We're on page 26.

Mr. Balkissoon: I move that section 2 of the bill be struck out and the following substituted:

"Bill 14

"2(1) This section applies only if Bill 14 (Access to Justice Act, 2006), introduced on October 27, 2005, receives royal assent.

"Same

"(2) References in this section to provisions of Bill 14 are references to those provisions as they were numbered in the first reading version of the bill and, if Bill 14 is renumbered, the references in this section shall be deemed to be references to the equivalent renumbered provisions of Bill 14.

"Same

"(3) On the later of the day Bill 14 receives royal assent and the day subsection 1(5) comes into force, subsection 7.2(2) of the Emergency Management and Civil Protection Act is repealed and the following substituted:

"Notice

"(2) Subsection 18(4) of the Legislation Act, 2006 does not apply to an order made under subsection 7.0.2(4) or 7.1(2), but the Lieutenant Governor in Council shall take steps to publish the order in order to bring it to the attention of affected persons pending publication under the Legislation Act, 2006."

This is just a—

Mr. Kormos: On a point of order: This is a most interesting motion because it incorporates a bill that

hasn't even received third reading, never mind royal assent. It's not even law. It incorporates but a motion, because all it is is a motion before the House, right? Move first reading; move second reading. It introduces a motion, which is still before the House, and incorporates it into—and we're asked to vote on an amendment that is a "what if" amendment. I'm concerned about the orderliness of this.

Mr. Albert Nigro: For the record, I'm Albert Nigro from the office of legislative counsel. Mr. Kormos, I can't speak to the parliamentary procedure involved, and I won't address an area outside of my area of expertise. I can speak for the experience of the drafter and the practices of my office.

Where there is legislation in the House that has been introduced and will affect a bill that's also working its way through the House, we will draft contingent provisions. They will have no force or effect if both bills are not passed. If you read that section, technically that's the effect of it. All this section does is change a reference from the Regulations Act to what may be a newly enacted Legislation Act. Again, I can only say from my experience that it's fairly common to do this in legislation.

Mr. Kormos: I'm not quarrelling with the fact that it's drafted and what legislative counsel is doing, but I am speaking very specifically to the parliamentary appropriateness of it, and I appreciate Mr. Nigro's comments in that regard.

You know that there have been Speakers' rulings in the recent history of this Parliament—I'm talking about within the last five and six years—that have severely criticized, to the point of suggesting that government got close to *prima facie* contempt for treating unpassed legislation as if it were law. Off the top of my head, if I recall, I think it was Speaker Stockwell who made that ruling. So there has been concern about that.

I'll live with your ruling, but I'm raising this now. I appreciate what legislative counsel is doing. It seems to me that what has to be done, in terms of maintaining regard for Parliament, is that you pass Bill 56 or let it pursue whatever course it takes. If it has to be amended to comply with subsequent law that passes, you amend Bill 56 either in the stage that it's at through second reading/committee/third reading or after the fact by way of a stand-alone amendment. It's just a proposition. Again, I'll stand with your ruling, but I think this could be one of the more important rulings you're called upon to make in your career as Chair of this committee.

The Chair: It appears that this amendment is in order. I'm going to ask if there is any further debate with respect to this. No further debate?

All those in favour? Carried.

Shall section 2, as amended—

Mr. Kormos: One moment. You're not going to entertain debate on section 2?

The Chair: Yes. Is there any debate on section 2? I see no further debate on section 2. Shall section 2, as amended, carry? Carried.

Section 3, page 27, is a government motion.

Mr. Balkissoon: I move that subsection 50.1(5) of the Employment Standards Act, 2000, as set out in subsection 3(3) of the bill, be struck out and the following substituted:

"Limit

"(5) An employee is entitled to take a leave under this section for as long as he or she is not performing the duties of his or her position because of an emergency declared under section 7.0.1 of the Emergency Management and Civil Protection Act and a reason referred to in clause (1)(a), (b), (c) or (d), but, subject to subsection (5.1), the entitlement ends on the day the emergency is terminated or disallowed.

"Same

"(5.1) If an employee took leave because he or she was not performing the duties of his or her position because of an emergency that has been terminated or disallowed and because of an order made under subsection 7.0.2(4) of the Emergency Management and Civil Protection Act and the order is extended under subsection 7.0.10(4) of that act, the employee's entitlement to leave continues during the period of the extension if he or she is not performing the duties of his or her position because of the order."

This is an amendment that was suggested to provide job protection in case of an extension of the emergency order beyond the termination date.

The Chair: Debate? No further debate. All those in favour? Opposed? Carried.

Next is an NDP motion, page 27a.

1130

Mr. Kormos: I move that section 50.1 of the Employment Standards Act, 2000, as set out in subsection 3(3) of the bill, be amended by adding the following subsection:

"Same

"(5.1) Without limiting the generality of subsection (5), an employee is entitled to include in his or her leave under this section a reasonable amount of time after the declared emergency is terminated and the reason referred to in clause (1)(a), (b), (c) or (d) is over before recommencing performing the duties of his or her position."

This provides some reasonableness to the leave permitted and the understanding that there is a transition, that there may well be any number of things that somebody who has been out there dealing with SARS, floods or any of these crises that we could possibly anticipate—that they would need a time frame from when the emergency is terminated, when the state of emergency ends, until they're reasonably expected to return to work.

The Chair: Any debate?

Mr. Balkissoon: The government's position is that our motion 29 deals with this amendment. We feel that 29 addresses the issue appropriately to satisfy the government's position, and we will not be supporting this in light of what is proposed in 29.

Mr. Kormos: That's so unreasonable, Mr. Balkissoon.

The Chair: Any further debate?

Mr. Kormos: Recorded vote.

Ayes

Elliott, Kormos.

Nays

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: That's lost.

Next is a government motion.

Mr. Balkissoon: I move that section 50.1 of the Employment Standards Act, 2000, as set out in subsection 3(3) of the bill, be amended by adding the following subsection:

"Retroactive order

"(9) If an order made under section 7.0.2 of the Emergency Management and Civil Protection Act is made retroactive pursuant to subsection 7.2(1) of that act,

"(a) an employee who does not perform the duties of his or her position because of the declared emergency and the order is deemed to have been on leave beginning on the first day the employee did not perform the duties of his or her position on or after the date to which the order was made retroactive; and

"(b) clause 74(1)(a) applies with necessary modifications in relation to the deemed leave described in clause (a)."

Again, this is an amendment we're proposing to provide job protection corresponding to the retroactivity, just to be consistent.

The Chair: Any debate? All those in favour? Opposed? Carried.

Next is also a government motion.

Mr. Balkissoon: I move that subsection 141(2.1) of the Employment Standards Act, 2000, as set out in subsection 3(4) of the bill, be struck out and the following substituted:

"Regulations re emergency leaves, declared emergencies

"(2.1) If a regulation is made prescribing a reason for the purposes of clause 50.1(1)(d), the regulation may,

"(a) provide that it has effect as of the date specified in the regulation;

"(b) provide that an employee who does not perform the duties of his or her position because of the declared emergency and the prescribed reason is deemed to have taken leave beginning on the first day the employee does not perform the duties of his or her position on or after the date specified in the regulation; and

"(c) provide that clause 74(1)(a) applies, with necessary modifications, in relation to the deemed leave described in clause (b).

"Retroactive regulation

"(2.2) A date specified in a regulation made under subsection (2.1) may be a date that is earlier than the day on which the regulation is made.

"Regulation extending leave

"(2.3) The Lieutenant Governor in Council may make a regulation providing that the entitlement of an employee to take leave under section 50.1 is extended beyond the day on which the entitlement would otherwise end under subsection 50.1(5) or (5.1), if the employee is still not performing the duties of his or her position because of the effects of the emergency and because of a reason referred to in clause 50.1(1)(a), (b), (c) or (d).

"Same

"(2.4) A regulation made under subsection (2.3) may limit the duration of the extended leave and may set conditions that must be met in order for the employee to be entitled to the extended leave."

This is an amendment to ensure job protection—

Mr. Kormos: We support it.

Mr. Jeff Leal (Peterborough): I'd ask for a recorded vote.

The Chair: A recorded vote has been asked.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

The Chair: Carried. Is there any further debate on section 3? Seeing none, shall section 3, as amended, carry? All those in favour? Opposed? Carried.

Is there any debate on sections 4, 5 and 6? Seeing none, then shall sections 4, 5 and 6 carry? Carried.

Shall the title of the bill, as amended, carry? Is there any debate on this?

Mr. Kormos: Well, Chair, you know that New Democrats have grave concerns about this bill, especially when this is it, after three years. This is what the government of the Dalton McGuinty Liberals comes forward with in terms of emergency management—after witnessing SARS, and suffering SARS and seeing the incredible dedication of so many health workers; after witnessing the flooding in Mr. Leal's community, in Peterborough—not just once but twice, at least twice; and after the experience of Bill 138—and that dog is still penned up somewhere in the government House leader's dog pound. Remember Bill 138? I remember it oh, so well. That was the phoney, incredibly self-serving, pompous, silly exercise that was part of keeping some government backbenchers occupied, at least until Ms. Broten found her way into cabinet.

I remember being at the committee, and poor David Zimmer, for whom I have regard—I have regard for Ms. Broten as well, but she and he were like two pit bulls, if you will, trying to mark out turf, because the competition as to who was going to make—because you've got to understand, folks, it's different for Mr. Leal and for Ms. Van Bommel. For Toronto members, it's difficult to get press, right? Your wife has to provoke you to present some creative and interesting private member's bill that I end up having to defend on—

Mr. Berardinetti: For the record, my wife's name is Michelle. She always likes to see her name in Hansard.

Mr. Kormos: Michelle has to come up with creative, provocative subject matters for legislation that I end up defending on talking head shows.

Mr. Berardinetti: For the record, I thank Mr. Kormos for defending that bill.

Mr. Kormos: When is it going to be called for third reading?

Mr. Berardinetti: Unfortunately, I don't sit in all the House leader meetings, and I would ask Mr. Kormos to bring it up at the next House leader's meeting.

Mr. Kormos: I'll do my best, Mr. Berardinetti.

But Bill 138—and here were Ms. Broten and Mr. Zimmer, two Toronto members. They were like two pit bulls marking their turf. Then, Mike Colle—who wasn't in cabinet yet, you understand—wanted a piece of the action too. So he got himself made sort of honorary Chair. Remember? That was the one where Mr. Oraziotti had been made Chair of the committee and didn't come to work for six months. Mike Colle took the chair gladly, gleefully, because Mike wanted a piece of this action.

This was the emergency management bill that was going to be drafted by the committee. What a dog's breakfast it was, if we're going to carry on with these canine metaphors and similes—what a dog's breakfast. There were little bits and pieces of everything. I mean, Julian Fantino, not yet then emergency management czar, still sending Jim Karygiannis out on his hands and knees, sniffing out pot-grow operations. Julian Fantino was here, and just the lineup was incredible.

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I questioned Ms. Broten, now Minister of the Environment, and Mr. Zimmer, now parliamentary assistant to the Attorney General. I said, "You guys aren't serious. The Premier's office is just sending you out to play: 'Go entertain yourselves and pretend that you're doing something important.'" Well, no; they were adamant. Ms. Van Bommel, you read some of those Hansards. They said, "No, this is a serious process. The Premier's office has assured us that they're going to give effect to our serious deliberations." Ms. Broten wanted to hire high-priced Bay Street lawyers to come in, and I don't know whether Mr. Nigro remembers. Well, legislative counsel had to chastise some of these members because legislative counsel had to make it clear that if they wanted legal advice from legislative counsel, legislative counsel was going to bill, and it wasn't part of the job description of legislative counsel. You go to research or you go hire a lawyer like other people do.

But it was an incredible exercise to observe, and the competition to get to the head of the line in terms of that bill was incredible. Of course, what has happened to Bill 138? It is in legislative orbit. The trajectory is that centrifugal effect where it gets further and further away from earth until it finally ends up disappearing in the black hole where so many silly bills end up, including, sadly, a whole bunch of private members' public business, sometimes good legislation from all three caucuses.

So what happened to Bill 138? Was the Premier sincere about it? What we discovered well into the prepar-

ation of 138 was that the Ministry of the Attorney General had already prepared an emergency management bill. It was a ruse, a scam. We've been had. We've been toyed with. We've been played with. We were being teased. I was pretty cynical about the process from the get-go so I didn't really feel as if my goat had been gotten, but the poor government members have been taken to the cleaners on it. Bill 138 is still there. Maybe it has become 137 by now; maybe 139. I don't know.

But, then, what do you get served up? There was some significant criticism. You see, one of the things that I pleaded with the government about was to hold off on 138 until the SARS reports came out—SARS 1 and SARS 2. Then, if I recall, it was somewhat gratuitously that Mr. Justice Campbell, who conducted the SARS inquiry, made some commentary about Bill 138 and expressed some concerns. But what does the government do? Does it incorporate the SARS recommendations into its emergency management bill—many of those recommendations echoed by people like ONA and OPSEU; not all of them but many of them? No.

Emergency management—one can never say it often enough—is all about what's there on the ground in municipalities across Ontario. It's not about what happens here at Queen's Park, by any stretch of the imagination. For firefighters, it doesn't matter whether one building is on fire or 100 buildings are on fire; they respond as best they can. A hundred buildings doesn't make it an emergency different than one building, and again the argument around extraordinary powers just boggles the mind.

No firefighter that I'm aware of has ever not entered a building to save a life for fear of being sued for trespass. What a silly proposition. No cop has ever failed to rescue a person in distress for fear of being charged with damage to property by kicking down a door. They conduct themselves rigorously when it comes to arresting crooks because they don't want the charge to be blown away by defence arguments around charter violations, but when it comes to saving lives, no cop that I'm aware of has ever said, "Oh, I'm not sure whether the law permits me to go here or do this to save a person's life." The fact is that in our system we don't punish people even if they do infringe on—what's the phrase?—the de minimis principle, amongst other things. Nobody is going to be charged with mischief to private property for kicking down the door to save somebody from being burned or being drowned—nobody. Nobody is going to get sued. If they sue you, you might end up with a court reluctantly giving the old British halfpenny award to the successful purported victim. The interesting thing was that none of these powers seemed to be critical in the context of what happens in Ontario today—I'm talking about 1 through 14. Then we've got the strange stuff around procurement and a lack of clarification.

Every one of the NDP motions was in response to submissions specifically made by ONA and OPSEU. As a matter of fact, we don't sit down and write these amendments; the legislative counsel writes them. None

of us sits down at our personal computer and writes legislation; we'd be fools if we tried. But legislative counsel, in our case, simply got told to respond to: "Here are the submissions made by ONA. Here are the submissions made by OPSEU." Bulleted 1, 2, 3, 4, and 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, or whatever it was—those are the amendments.

I feel badly for those folks. Their members care about caring for people. You know that; nobody's going to dispute that. I suspect that in the government ranks there was some sympathy for the positions they put forward. I suspect that very, very strongly, because all of you know these people in your own lives, in your own communities. You've seen them work. Mr. Leal has made comment about his own fire services. He couldn't contain his praise yesterday when he had his fire chief here, not inappropriately.

You know these people. You know that they've got important things to say and important things to contribute. In your hearts, you know that one of the solutions to emergency management is ensuring an ongoing communication and a protocol between workers and their employers; you know that in your hearts. Some of the amendments tried to make sure that the law said that as well.

I suppose I don't fault any of you individually, because just like none of us sits down and types out amendments to legislation, when you're in government and you're sitting on committee, it's a serious career-limiting move to vote against the government frequently. You can do it once in a while and maybe just get chastised. If you do it more than once in a while, you'll lose your position as parliamentary assistant or as Chair of a committee. Do it a lot and you'll probably ensure your longevity here at Queen's Park, but you won't improve rapport with the Premier's office and you might have to go to the opposition House leader's office to find out when votes are being held, because your government will try to squeeze you out. But you can't keep a good woman or man down, can you?

So I find this a regrettable thing; I really do. I know what the government is trying to do. I can read legislation; I can analyze it. I've used the talents of the resources available to us in terms of the Legislative Assembly staff in that regard as much as we're entitled to, so I know what the government's trying to do. I think it misses the mark. I really do. The debate around emergency management should have been about how well small- and smaller- and smallest-town Ontario is equipped.

We know Toronto's got a huge firefighting service. They've got machinery and equipment and gadgetry and high-tech stuff—I shouldn't be presumptuous. They've got it, I was going to say, "coming out of their ears," but I'm sure even they would argue that they don't have enough. But if you go down to places like Thorold or Capreol—up to places like Capreol, down to places like Thorold, or to places like where you come from, Mrs. Van Bommel, or the communities around Peterborough,

the small-town, central Ontario communities, they don't have those resources. They've got to beg, borrow and steal. Firefighters still do what they're called upon to do, but they don't do it as safely for themselves and they certainly don't do it as effectively. As I say, a mini-crisis in one of those communities puts them behind the eight ball in terms of taxes for a fiscal year, if not more. It whacks households immediately. They haven't got the scale to spread it out like big-city Ontario.

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So it seems to me that the regrettable thing is that the discussion should have been very much focused on the ability of all the residents of Ontario to have available to them the optimal—and I don't know what the optimal is. I don't know whether it's 100% capacity. We talked about that with fire chiefs yesterday. I don't know whether it's 100% capacity, because 100% capacity for the worst-case scenario means you're maintaining pretty high levels of resources with only a marginal likelihood of ever using them at any given point in time.

But I do know this. You were on city council, Mr. Balkissoon; you were on city council, Mr. Berardinetti; you were, Mr. Leal; and you were, Ms. Van Bommel. I was, too—small-town Ontario. I suppose the only differences are the scale between Welland and Toronto, the number of zeroes after the annual budget.

Mr. Berardinetti: Scarborough.

Mr. Kormos: Scarborough. But at the end of the day—

Mr. Berardinetti: We started small in Scarborough.

Mr. Kormos: How many people in Scarborough? How many hundreds of thousands of people in Scarborough?

Mr. Berardinetti: Half a million.

Mr. Kormos: Yes, half a million. You thought you were small-town Ontario. No, no. Small-town Ontario is when everybody knows you.

That's what the debate should have been about. I have regard for the people who were called upon to draft this. I sense very much that the Attorney General draft bill that was revealed, that was discovered during those Bill 138 hearings, still forms the gist of this bill. I just don't think it does the trick. Again, we missed an opportunity to accommodate ONA and OPSEU. I don't think there's anything wrong with accommodating people. I'm an easygoing guy; you folks know that. I don't think there's anything wrong with accommodating people. We should have accommodated ONA and OPSEU. Maybe not to the final submission, but we had a chance to do it. We had a chance to bring them into the loop and to put it in the legislation. I know Mr. Balkissoon may well say, "We've got a good rapport with these unions, and we're going to work with them." No, they'd have loved to have seen that in the bill; you know that.

I tell you, I'm not going to be supporting this bill at committee. I'm not going to be supporting its return to the House. I think there is more work that has to be done. I think we should sit down with this bill and reconsider some of the amendments that were denied.

The Chair: Any further debate?

Mr. Kormos: Recorded vote.

The Chair: Shall the title of the bill carry?

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Kormos.

The Chair: Shall Bill 56 carry?

Mr. Kormos: Recorded vote.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: Carried.

Shall I report the bill, as amended, to the House?

Mr. Kormos: Recorded vote.

Ayes

Balkissoon, Berardinetti, Leal, Van Bommel.

Nays

Elliott, Kormos.

The Chair: It's carried.

That concludes our business for this meeting. This committee is adjourned.

The committee adjourned at 1155.

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Official Report of Debates (Hansard)

Tuesday 8 August 2006

Journal des débats (Hansard)

Mardi 8 août 2006

**Standing committee on
justice policy**

Human Rights Code
Amendment Act, 2006

**Comité permanent
de la justice**

Loi de 2006 modifiant le Code
des droits de la personne

Chair: Vic Dhillon
Clerk: Anne Stokes

Président : Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICY

Tuesday 8 August 2006

COMITÉ PERMANENT
DE LA JUSTICE

Mardi 8 août 2006

The committee met at 1010 in Four Points by Sheraton London, London.

HUMAN RIGHTS CODE
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT LE CODE
DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

The Chair (Mr. Vic Dhillon): Good morning, everyone. Welcome to the meeting of the standing committee on justice policy. The order of business today is Bill 107, An Act to amend the Human Rights Code. This is our first day of public hearings, in London today. We will be meeting in Ottawa tomorrow and in Thunder Bay on Thursday. Public hearings will also be held in Toronto in the fall.

For your information, to make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services are being provided each day. As well, two personal support attendants are present in the room to provide assistance to anyone requiring it.

Also, in the spirit of respecting human rights, the purpose of today's proceedings, we would like to remind everyone of their responsibility to make this process accessible. When presenting, please speak clearly, audibly and at a moderate pace for the benefit of everyone present. I may interrupt you and ask you to slow down if we find you're speaking too quickly.

SUBCOMMITTEE REPORTS

The Chair: The first order of business is the adoption of the subcommittee report. I would ask someone to read the first report into the record and move its adoption.

Mr. Lorenzo Berardinetti (Scarborough Southwest): I have the report of the subcommittee.

Your subcommittee considered on Thursday, June 22, 2006, the method of proceeding on Bill 107, An Act to amend the Human Rights Code and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 107 in London, Ottawa and Thunder Bay on August 8, 9 and 10, 2006. Dates and locations may

change depending on logistics and numbers of requests made in each location.

(2) That the committee resume public hearings in Toronto after the House resumes in the fall.

(3) That the deadline for those who wish to make an oral presentation on Bill 107 for the locations of London, Ottawa and Thunder Bay be 5 p.m. on Friday, July 21, 2006.

(4) That the deadline for those who wish to make an oral presentation in Toronto after the House resumes be determined at a later date.

(5) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will advise the Chair so that a subcommittee meeting may be called to make decisions regarding meeting dates and witnesses to be scheduled.

(6) That organizations appearing before the committee be given 30 minutes each and individuals be given 20 minutes each in which to make their presentation, depending on numbers of requests made and subject to modification by the subcommittee.

(7) That an advertisement be placed for one day in all Ontario English daily newspapers, in all Ontario French weekly newspapers, in all ethnic newspapers in Ontario and also be placed on the Ont.Parl channel, the Legislative Assembly website and in a press release.

(8) That the ad specify that opportunities for video conferencing and teleconferencing may be provided to accommodate witnesses unable to appear in each location.

(9) That sign language interpretation, closed captioning and attendants for the disabled be provided for all public hearings on Bill 107.

(10) That interpretation for languages other than English and French be provided on the request of witnesses requiring such interpretation for their presentations.

(11) That the subcommittee meet again to make decisions on dates for clause-by-clause consideration.

(12) That the deadline for written submissions be the end of public hearings on Bill 107.

(13) That the research officer provide the committee with a background of issues considered when the Human Rights Commission was originally established.

(14) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(15) That options for video conferencing or teleconferencing be made available to witnesses where reasonable.

(16) That requests for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(17) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Thank you, Mr. Berardinetti. I just want to make the point that the closed captioning services are not in operation at this time. We are making arrangements for them to be in place very shortly.

I just want to check with the interpreter whether that speed was fine. So if we can have everyone speak at that rate, that would be much appreciated.

Is there any debate on the motion?

Mr. Peter Kormos (Niagara Centre): I just want to thank Mr. Fenson for his compliance with request number 13, I believe, on that submission. He provided, as usual, a very capable précis of the origins of the commission.

The Chair: Any debate? Seeing no further debate, all those in favour? Opposed? That motion is carried.

I believe there is another subcommittee report.

Mr. Berardinetti: I would like to move adoption of the report of the subcommittee on committee business.

Your subcommittee further considered on Tuesday, July 25, 2006, the method of proceeding on Bill 107, An Act to amend the Human Rights Code and recommends the following:

(1) That the committee meet for public hearings on Bill 107 in London on Tuesday, August 8, in Ottawa on Wednesday, August 9, and Thunder Bay on Thursday, August 10, 2006.

(2) That the clerk schedule witnesses in London on a first-come first-served basis between 10 a.m. and 5 p.m. with organizations being given 30 minutes and individuals 20 minutes in which to speak.

(3) That those who cannot be scheduled in London during the time available be advised that they will be given the opportunity to appear before the committee at a later date in London or in Toronto.

(4) That witnesses in Ottawa be given 20 minutes in which to speak in order to schedule all those who made requests by the deadline.

(5) That, in Thunder Bay, organizations be given 30 minutes and individuals 20 minutes in which to speak.

(6) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair: Any debate? Seeing none, all those in favour? Opposed? That motion carries.

1020

LINDA SAXON

The Chair: Our first presenter this morning is Ms. Linda Saxon.

Mr. David Zimmer (Willowdale): Mr. Chair, as the parliamentary assistant at the Attorney General's office, I have some opening remarks that I'd like to put on the record before we commence.

The Chair: Does the committee have any opposition to that?

Mr. Kormos: We've had exhaustive subcommittee meetings, and it was agreed that because of the number of people who wanted to participate we'd get right into the hearings, so let's get right into the hearings. I appreciate Mr. Zimmer's zeal, but Ms. Saxon is zealous as well.

The Chair: Ms. Saxon, you have 20 minutes. Any time that you don't use will be divided up amongst the three parties. You may begin.

Ms. Linda Saxon: Thank you. Good morning. My name is Linda Saxon. I live in the historic town of Amherstburg, a rural community south of Windsor. I am very concerned about Bill 107 because, as an individual with a disability, I feel that my quality of life is being threatened. I had to rely on the Ontario Human Rights Commission to ensure my right to equal access in my community.

As a victim of human rights violations, I would like to share some of my experience with you.

In 2000, I filed my first human rights complaint against the town of Amherstburg, which denied my request for accessible parking in front of the local high school where I volunteered on the high school council executive.

In 2001, I filed my second human rights complaint against the town of Amherstburg because it would not provide equal access to the town's historic Carnegie library.

These complaints followed several frustrating years of requests, which I believe aggravated my disability. In the case of the library, I made my first request for accommodation in 1992 and continued for almost a decade with correspondence, appearances before town council and letters to the editor. Throughout the same decade, there were engineers' studies, consultants' reports, announcements that fundraising would begin, and requests for proposals—all delaying tactics, in my opinion. The deputy mayor at the time even publicly stated, "If someone files a complaint with the Human Rights Commission we might be forced to do it. So far, no one has complained."

Accessibility was just not a priority. The town did not take advantage of funding initiatives—for example, SuperBuild—which placed an emphasis on accessibility projects. The town was invited by SuperBuild to apply for the marina it listed as the community's priority project, which I questioned. Rather than change its priority to the library, which met the criteria for funding, the town withdrew its application.

In 2001, when I learned that the town intended to make repairs to the library, I requested that council include accessibility in the tender. Instead, the town donated \$710,000 for a replica of the tall ship HMS

Detroit to set sail. Taxpayers incurred a 9% tax hike over a two-year period for the project which, several years later, still has not become a reality.

My two human rights complaints were combined into one. I represented myself, and of course the town vigorously defended itself. I endured a battle for simple requests that are granted all the time in larger cities like Toronto, London and Windsor. It was as though elected officials were personally affronted by my exercising my human rights. Feeling discriminated against was humiliating enough, but my feeling that I was a second-class citizen intensified when the town's solicitor refused to send me copies of correspondence sent to the Ontario Human Rights Commission. In five separate letters, I reminded the town's law firm that I was a party to the complaint and would appreciate the courtesy of being copied on all correspondence.

Eventually, just prior to a scheduled Ontario Human Rights Tribunal hearing, minutes of settlement were agreed to in April 2004. In August 2004, the town's lawyer advised the commission that the town "will be working with respect to the diameter of the railing." Almost a year later, in June 2005, the town's lawyer advised that "the chief building officer said this matter will be resolved in two weeks." In September 2005, I notified the commission that I wished to file a breach of settlement complaint against the town of Amherstburg. Within days, the handrails were replaced with ones that complied with the Ontario building code.

An item I requested in the 2004 settlement was a mandatory training session for town council on the duty to accommodate individuals with disabilities under the Ontario Human Rights Code. I hoped that council members would benefit from this educational session.

My expectation that nothing would change has been met. For almost three years I've requested, among other things, that the town's and police service's website be made accessible, that documents be provided in multiple formats and that the model parking bylaw be adopted—to no avail. At last December's town council meeting, two councillors chastised me for raising concerns about equal access. One councillor proclaimed, "I resent this delegation," while another asked me to face the audience and tell them about the "good things the town has done for accessibility."

In May of this year, the town reviewed its official plan. I objected to the use of the word "handicapped," the lack of commitment to housing for persons with disabilities and provision of accessible parking, barrier-free parks, walkways etc. At the July 31 public meeting, it was noted "that the terminology regarding accessibility be corrected throughout the document." I was not requesting a term in the terminology regarding accessibility; I was asking that documented, preferred terms and person-first terminology be used when referring to persons with disabilities. Simply editing and replacing the word "handicapped" with "disabled" was unacceptable. I had previously informed council that the lexicon of preferred terms could be downloaded at no cost and it

would help avoid the use of offensive and/or insensitive language. I offered samples of more appropriate terminology, which were rejected, as were my remaining objections to the official plan, so I submitted them again last Monday evening.

Given my experience with my municipality to date, I feel Bill 107 needs major changes. Bill 107 takes away important rights that Ontario's disability community fought for and won in 1982. If the Human Rights Commission's investigation and prosecution powers are stripped and its role is reduced to education, I am confident that my rights will continue to be infringed.

I would not feel comfortable investigating my own complaint; it would be unrealistic for me to expect the town to co-operate. The commission's investigator made several contacts with the town's counsel to gain relevant information for the investigation of my complaint. Despite the investigator's efforts, no information was obtained until after the director of mediation and investigation for the commission wrote a detailed letter to legal counsel for the town. The response was, however, silent on why it took 10 years of intervention by me to obtain a commitment from the town to make the library accessible.

For the first time, the Human Rights Tribunal can charge user fees for going to the tribunal. It could expose human rights complainants for the first time to have to pay their opponents' legal costs at tribunal hearings if they lose. Now the tribunal can only order the Human Rights Commission, not the discrimination victim, to pay the legal costs of the party accused of discrimination. As I am on disability pension, I would not be able to afford a lawyer to represent me at a tribunal hearing, let alone pay my opponents' legal costs.

This bill unfairly forces thousands of discrimination cases now in the human rights system to start all over again in the new system, but without the benefit of the Human Rights Commission's help. If I have to file any more human rights complaints against my municipality, I want the full protection and benefit of the code in its current state.

By Bill 107, the McGuinty government seriously breaks faith with 1.5 million Ontarians with disabilities. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After winning the election, the McGuinty government rejected disability community requests to create a new independent agency to enforce the new disability act. The government said it isn't needed since persons with disabilities can use the Human Rights Commission's complaints process to enforce their rights. The disability community applauded the new 2005 disability act, even though it created no new independent enforcement agency. Now Bill 107 removes most of the Human Rights Commission's public enforcement teeth.

1030

I strongly endorse the AODA Alliance's draft submission on Bill 107, and I feel that the following are some of the changes that should be made to Bill 107:

It should be amended so that it does not repeal the commission's powers under part III of the current code to investigate, conciliate and, where warranted, prosecute human rights complaints.

Section 46.1 of the bill should be amended to provide that every human rights complainant has the right to publicly funded, effective legal representation by a lawyer and proceedings at the Human Rights Tribunal from the outset of the complaint through and including all appeals and the enforcement of any tribunal order.

It should be amended to provide that the tribunal may not order a complainant to pay legal costs at the tribunal and that a court may not order a complainant to pay legal costs on a judicial review application or, if appeals to a court aren't abolished by Bill 107, on an appeal to court.

It should be amended to eliminate section 45.2 and to prohibit the tribunal from charging user fees.

Sections 51 to 56 of the bill should be amended to provide that any complaint that has been filed with the commission before the date Bill 107 comes into force shall proceed and be dealt with under the existing code, not under Bill 107's new system.

Only human rights complaints filed on or after the date the bill comes into force should be dealt with under Bill 107's new system.

I hope my experience has demonstrated the need to preserve the right of every complainant to have the commission investigate their case. The town of Amherstburg complied with the code because it was forced to. It logically follows that education and advocacy are not strong enough tools to protect anyone's human rights. Another example of this is an Amherstburg police sergeant's human rights complaint, which the commission is currently investigating.

If the taxpayers in this province can pay millions of dollars to prop up Polkaroo and other TVO programs, I think persons with disabilities deserve to have their rights protected, investigated and enforced. I know this will be an election issue for me next year. I am tired of having to fight for what is right. I want to conserve my energy to fight my disease and enjoy my quality of life that others before me fought for. Thank you.

The Chair: Thank you. You have about three minutes each. We'll start with the official opposition. Mrs. Elliott.

Mrs. Christine Elliott (Whitby-Ajax): Thank you very much, Ms. Saxon, for your very thorough presentation. I just had one specific question and that was with respect to the minutes of settlement that were agreed to in April 2004. Can you elaborate a little bit more on what assistance you were provided by the commission in getting to that point? I think you had indicated that the director of mediations had to get involved. Could you explain a little bit more to us about what exactly happened in that process?

Ms. Saxon: We attempted mediation with my parking complaint first. Then, when the two were combined, I was offered an option for mediation, but I said no, based on my experience already with the parking complaint. The minutes of settlement addressed more than what I

had personally asked for. It did include public interest issues. I had asked for the elevator and the mandatory session for council members, and it was extended to include the handrails, the accessible washroom, placement of the paper towel holder etc.

Mrs. Elliott: This was all drafted with the assistance of the commission?

Ms. Saxon: Oh, yes.

Mrs. Elliott: Yes, okay. Thank you very much.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, Ms. Saxon. Look, first, I've got to come to Polkaroo's defence. Polkaroo costs but a fraction of Steve Paikin's salary, trust me.

Ms. Saxon: Okay.

Mr. Kormos: Yours is a very important contribution. We're going to hear all sorts of opinions over the course of today, tomorrow and then up in Thunder Bay. But you make an interesting proposal when you endorse the proposition that perhaps the government should create some choice for complainants and victims of discrimination. Let the complainant elect—I'm saying this because I want to make sure I understand what you're saying. Let the complainant elect to either proceed directly to the tribunal with their own lawyer and team of investigators or data, or let the complainant elect to have the commission conduct the investigation and perform the prosecution. Have I got that right?

Ms. Saxon: Yes, that's right.

Mr. Kormos: It seems to me that eliminating the commission is like eliminating the police force and the crown attorney's office. In other words, a victim of a crime can go directly to a court by laying a private charge and hiring a lawyer to prosecute that criminal charge. Surely the government doesn't advocate that as a solution to a backlog in criminal court. I think your proposal is a very fair one, and I'm confident that there are going to be members of this committee asking legislative counsel to draft amendments to that effect. Thank you very much.

The Chair: Ms. Matthews?

Ms. Deborah Matthews (London North Centre): Thank you very much. I'd like to take the opportunity to welcome you and everyone else here to London, to my town. I know we're going to hear from a lot of very thoughtful and well-informed people, and I appreciate your being the leadoff for us this morning.

Mr. Kormos: It's Mr. Bentley's town too.

Ms. Matthews: It's Mr. Bentley's town too. In fact, we might even be in Mr. Bentley's riding, or Mr. Ramal's riding. We share. So thank you.

I also want to just take a minute and say thank you for the fight you've had over the past many, many years. It's because of the work you've done and others like you that we are as far along as we are. We still have a long way to go, but the fight is worth it. Thank you for coming today. I know this is not easy to do, but because you and others are prepared to do it and to tell us your experience and what you think we can do to improve the bill, this will be a better bill at the end of the day than it was at the be-

ginning. So I want to thank you, and thank you for sharing your story with us.

Ms. Saxon: Thank you.

The Chair: Thank you, Ms. Saxon.

ROBERT ILLINGWORTH

The Chair: The next presenter is Mr. Robert Illingworth.

Good morning. You may begin.

Mr. Robert Illingworth: Thank you very much. My name is Robert Illingworth. I reside in London, Ontario. The reason I requested to appear before the committee is that I have been involved in a human rights complaint that has gone to tribunal and is now going to appeal. I felt that my particular case offers a lot of insight into the way the tribunal works and how the process works and how it might be improved.

I'll just give you a brief synopsis of the case itself. It has to do with the Coroners Act and discrimination in the Coroners Act. The respondents are the Attorney General and the chief coroner of Ontario.

I originally got involved in this situation with the Coroners Act back in 2002 by writing a letter to Keith Norton, who was the chief commissioner at the time. I had mentioned to him that I thought the act was discriminatory because mandatory inquests are provided for prisoners who die in prison, but if you die as an involuntary patient with your freedoms taken away, you're not entitled to a mandatory inquest of your death. I felt this was discriminatory.

Mr. Norton agreed and wrote a letter to the chief coroner, cautioning him of the possible discrimination in this differentiation and recommended that they hold inquests for involuntary patients. The only reason I bring up the letter to the commissioner is that I know that even under Bill 107 the commission is given certain powers to advise, to educate etc. However, it seems to me that a government agency can just choose to ignore any recommendation from the chief commissioner, as happened in my case. So I filed a complaint with the Human Rights Commission, and that complaint went through the opposition of section 34, then it went to 36, and it was decided that it would go before the tribunal, even though the commission's own investigation was going to turn down the complaint.

1040

The major thing I want to talk about is the tribunal part of it, because this seems to be the direction that the government is moving in for all complaints. In my particular case, it was a three-week hearing. At the very beginning of the hearing, the government already put a motion forward to dismiss the complaint. That was looked into by the tribunal and that was overturned. They launched a judicial review. I wrote to the Attorney General and said that I thought this was an obstruction of justice because that's what we have human rights for, to at least hear the matter and make a decision, rather than have a judicial review and dismiss it right from the beginning without even getting to the tribunal.

I don't know how judicial reviews are going to fit into Bill 107, but if the government or someone else can come ahead and have a judicial review just to question the tribunal's authority to even hear the complaint, this is one way of rooting out complaints right from the beginning. I don't know how that's going to operate under here. From the very first day of the hearing, the Attorney General hired someone from the court reporting office to transcribe the entire hearing, at a huge cost, I would imagine, to do that. As a complainant, this indicated to me that all the hearing was being used for was to set up for an appeal. That was the purpose in having the hearing, to prepare for an appeal. In my particular case, the adjudicator was former Supreme Court Justice Peter Cory. He was assigned to that case, I assume, because of his experience with human rights issues and his knowledge of the law.

This is where the whole tribunal process, to me, broke down. Justice Cory, I thought, did a very thorough job of conducting the hearings. I'd also like to comment on the commission lawyer. The commission lawyer did a very thorough job in defending the complaint. I think this is relevant, because they want to set up a system whereby people can access some sort of legal counselling. I think it's essential to have somebody with the background that the lawyers have at the commission—they know the precedent-setting cases, they know how things operate—rather than somebody who may not even have experience with human rights being there to represent you. I don't know what kind of background the lawyers are going to have that people are going to be able to access, but I'm sure they won't have the experience of the lawyer that handled my particular complaint.

Around the issue of appeals, I know that under Bill 107 you won't have the right to appeal a tribunal decision. In my particular case, the Attorney General has chosen to appeal this case. They claim to have found a total of 37 errors in law and fact in that tribunal case. Remember that this was conducted by a former Supreme Court justice. To me, this was a case that was set for appeal before the door even opened, and the reason that I bring that up is that Bill 107 was considered long before this appeal was launched in my case. The appeal was just launched in June, so one of the questions that I have to ask is, when it comes to sincerity in putting a bill forward, I haven't heard any rationale behind why they're not going to have any more appeals. However, you can't sit on both sides of the fence. You can't say that appeals are not important and then turn around and appeal a case that the commission considered to be a landmark decision.

So I don't know where Mr. Bryant truly sits on this particular point, because he seems to be playing both sides of the fence: When it's convenient to appeal, "Let's get this appeal in before this bill takes away the right to appeal."

The other thing I want to mention is all the technical aspects of a tribunal. I was represented—well, I guess you don't say, "I was represented," but the complaint was

represented by the commission. But there was an additional part of the complaint which the commission didn't carry and which I had to represent myself. In the tribunal hearings, it's no different than being in a court. You have to put together factums, books of authorities, things I had never heard of before that I had to research and figure out how to put together, and then you have the cost of couriering these things to all these other people involved in the case. It can become quite a cost factor for somebody in that situation.

As far as access to the tribunal, I lived in Barrie, as a complainant, but the tribunal was in Toronto in the middle of January, which meant I had to get down to Toronto every day for three weeks from Barrie. That was considered accessible to me and within the catchment area of Toronto.

I guess the other issue I wanted to speak to has to do with the tribunal as well. I think what's going to happen is that people are going to bring complaints to the tribunal. They are going to get some kind of legal advice, whether it be someone sitting beside them at the tribunal—I don't know if they will have that luxury of having somebody there every day or whether they'll get, as Mr. Bryant recommended to me, "You can call the law society and get half an hour of legal advice." That was his advice to me. So I don't know the in-depth legal advice that people are going to receive. There are all kinds of deadlines to be met, rules of evidence that have to be understood, rules of hearsay etc.

In my particular case, the Attorney General is even appealing Mr. Cory's qualifying of expert witnesses. So I think what's going to happen is, when it's a big case and the government is involved, there will be ways that they will find to delay the process, to have it reviewed, to have it dismissed before it's heard. That's what my fear is, that people are going to go in there against large companies that have bottomless pockets when it comes to defending themselves, and the complainant is going to have to rely on somebody they might have talked to for half an hour. I don't know who is going to prepare all the factums. I can't imagine all these tribunal hearings going on, with the amount of time that is consumed by one hearing alone. Are these lawyers going to prepare the factums for these people? Are they going to prepare the books of authorities for these people? And then are they going to present the case before the tribunal for the person, or is the person going to be left on their own? I don't think there's much clarification as to how the actual tribunal is going to proceed, but I can't see the tribunal dealing with the number of cases that they would have to deal with without shortchanging the complainant or the respondent, whoever is getting shortchanged in that process. You can't physically do it if the rules are going to be the same and you have to prepare all these factums and books of authorities and you have to serve them to people within certain dates. Things are already delayed by the time periods that people are allowed to bump things off. Even with the appeal in my case, we have to wait two months just to get the transcripts of these hearings.

Those are basically the things. I thought I should come before you, because I think my case speaks a lot to the government's belief in the tribunal truly being a way of resolving things. If that's the case and they truly believe that it should be in the hands of the tribunal, then why on earth are they appealing my case at this point? To put me through two more years—I've been dealing with this since 2002. When is it going to end?

1050

I would like to hear from the government the rationale for doing away with appeals, because nothing has been said on that issue: why they now think that appeals are not important. I haven't heard anything on that. But I certainly see the value of having commission representation at a tribunal. You need somebody there who knows the ropes and has the experience, especially in my case, when you're dealing with the Attorney General's office. They have very experienced lawyers with all kinds of degrees in administrative law etc. You need to be represented by somebody who really knows the process thoroughly.

I thank you for the opportunity to come here and say that, because I think they're making a big mistake if they go to tribunals only, because they'll never be able to fit them in the time frame, or they'll shortchange people by not giving full attention to the matter. I don't know if anyone has any questions.

The Chair: Thank you. We'll start with Mr. Kormos.

Mr. Kormos: Thank you, Mr. Illingworth. Of course the complaint that you speak of and the ruling is one that has received wide attention across the province. I agree with you. It takes some chutzpah to appeal Mr. Justice Cory, and it suggests that he erred in law time after time after time. But far be it for me—there will be appellate judges and lawyers making money in the course of doing that, and God bless.

You talk about a tremendously important public policy issue. In fact, Ms. Elliott's colleague Mr. Jackson has a private member's bill that advocates a coroner's inquest for the death of anybody in the care of children's aid societies, which is within the theme that you speak of.

The role of the commission, in your case, was a very important role in terms of advancing public interest. You cause me to reflect on the incredible role that the commission has played in protecting the rights of children with autism. I've sat through some of those hearings with Ms. Martel—incredibly complex material—data, research, medical research—requiring a great deal of expertise. The poor parents of these kids couldn't, nor should they be expected to have to, finance that type of litigation on their own.

I'm going to be subject to perhaps criticism, and I'm prepared to accept it, but I'm becoming increasingly impressed with the proposition that, fine, if you want direct access to the tribunal, have direct access, but don't take away the right of so many people who need the commission to prosecute, because, again, you're not the complaint; the issue is the complaint. You were so articulate when you said—did you hear what Mr.

Illingworth said? It isn't about him; it's about the issue. And that's why it's in the public interest that the commission prosecutes it, just like it's in the public interest that a crown attorney prosecutes criminal charges.

The investigative role: No parent or anybody else should be expected to have to undertake that responsibility, because they'll get blown out of the water time after time after time. Is that your sense as well?

Mr. Illingworth: Yes, that is. That is.

Mr. Kormos: Thanks kindly for coming in today. A valuable contribution.

The Chair: The government side? Mr. Zimmer.

Mr. Zimmer: Thank you very much for your submission. I should point out—you may or may not be aware of this—the Attorney General has publicly committed in the Legislature—it's a matter of record in Hansard—to amend section 46 to provide full legal support to Ontarians who have to turn to the human rights system. So at the end of this process, I expect, as the Attorney General has said, there will be an amendment to ensure full legal support of complainants at the tribunal/commission.

On your point of the appeals, the idea is to have expert commissioners or tribunal members dealing with these matters—people like Justice Cory. Their decision of the facts, there's a finality there. But there is always a judicial review in the event that the process in which the tribunal or the commission went about its work, if there's some mistake or error or flaw there. So the judicial review will deal with process issues, although the decision on the facts, there's a finality there, for the reasons you've given. I can have someone get you a copy of the Attorney General's statement on the proposed amendment to section 46, to ensure legal representation.

Mr. Illingworth: My concern with the judicial review and the process is that that's the very reason they were going to have a judicial review in our case, just to say that the tribunal is not the proper place to hear this etc. So it leaves the door open for large companies and governments to judicially review before the complaint is even heard and get it dismissed at that point. I know it's supposed to be "patently unreasonable" or something to get—

Mr. Zimmer: Yes, that's the test.

Mr. Illingworth: —to that stage, but that was my concern with that.

Mr. Zimmer: Your concern is well taken. But the judicial review, of course, will deal with errors of process. The facts on a tribunal finding will stand. Section 46 will be amended to provide proper legal service for the complainants. Thank you very much for attending.

The Chair: Mrs. Elliott.

Mrs. Elliott: Thank you very much for your presentation, Mr. Illingworth. With the presentation you've made, you've raised some excellent points that really go to the heart of the concerns that several members of the committee have with respect to this legislation, and that is with respect to who will be representing you and what sorts of qualifications people will have as they come

forward before the tribunal and whether they're going to be lawyers who are qualified in human rights legislation or what exactly their qualifications will be. Currently, that is very vague, and I understand that it is meant to be amended. But that is one big part that is left as sort of an open-ended question mark.

Secondly, with respect to the tribunal, of course, as you know, the tribunal can also form its own rules for how it will conduct itself, and that's another big area of concern about exactly what types of decisions it will make and how it will go about its work. Also, with a "patently unreasonable" test for going to judicial review, for all intents and purposes, there really isn't a right of appeal.

So I applaud you for bringing forward those matters. They're all very important and, in my view, they all need to be dealt with in far greater depth as we move forward in this process. I thank you for bringing them forward to us today.

The Chair: Thank you very much.

POLICE ASSOCIATION OF ONTARIO

The Chair: Next we have the Police Association of Ontario.

Good morning, gentlemen. If we can get your names for the record, you may begin any time.

Mr. Bruce Miller: Thank you. My name is Bruce Miller, and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities. With me is Dan Axford, who is the administrator of the London Police Association, is a member of the board of directors of the Police Association of Ontario and also a front-line police officer for over 20 years.

The Police Association of Ontario is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. The PAO is committed to promoting the interests of front-line police personnel, to upholding the honour of the police profession and to elevating the standards of Ontario's police services. We have included further information on our organization in our brief.

The need for legislative change in the area of human rights has been a matter of discussion for a number of years by many interested groups. We appreciate the opportunity to provide input into this important process.

The proposed legislation, as you know, would reform the complaints process so that discrimination claims would be filed directly with the Human Rights Tribunal of Ontario. The Ontario Human Rights Commission would shift its focus from adjudicating complaints to organizing proactive campaigns to prevent discrimination.

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The trend in legislative amendment in other jurisdictions is to leave human rights commissions re-

sponsible for public education and for promotion of human rights, but to remove human rights commissions as gatekeepers in the complaints process. The Police Association of Ontario supports the concept of direct access and is pleased that the government has moved on this important issue.

The PAO supports the legislation and its principles in general terms, but would like to comment on several issues related to two specific areas. The first surrounds funding. We would like to clearly state at the outset that the Police Association of Ontario believes that adequate funding for the commission and its related bodies is essential to the functioning of the commission. We believe that funding should be available to support complainants in bringing matters forward for attention. We would caution, however, that such funding must be limited to complaints of a serious nature involving the public interest and that such complaints must have a sense of legitimacy and province-wide application.

We share the government's goal to modernize and strengthen Ontario's 40-year-old human rights system by resolving complaints faster and more effectively and to better respond to modern human rights issues. However, criteria and guidelines must be put in place to avoid funding every complaint. This area must be addressed and cannot be left to the tribunal's discretion. Taxpayers must have assurance that only serious and legitimate complaints are being brought forward for review, and that frivolous and vexatious complaints are being dismissed.

The second area that we would like to comment on is the need to limit avenues of complaint. The avoidance of a multiplicity of proceedings and getting the complaint to the correct venue go hand in hand with the need to limit funding. We will be commenting on this subject, as it has a significant impact on policing.

Within the realm of policing, it should be noted that citizens in Ontario already have access to a police complaints process which can result in discipline and even dismissal where violation of a citizen's human rights so warrants.

Police personnel in Ontario are highly trained professionals. Their job is to identify, respond to and deal with people engaged in unlawful activities. Police officers are duty-bound to investigate, make arrests and lay charges on a daily basis. These duties are prescribed in legislation.

Our association is on record as supporting civilian oversight of policing. Police personnel are currently subject to rigorous public oversight. The oversight function is provided by members of local police services boards; elected municipal and provincial officials; special-purpose bodies, including the special investigations unit, the Human Rights Code and the Ontario Civilian Commission on Police Services; and coroners' inquiries, public inquiries, criminal and civil courts. We have been and continue to be actively involved with government and other stakeholders in discussions on how to improve Ontario's police complaints system. As an association

committed to excellence in policing, we are always willing to participate in a process that ensures that all Ontarians have faith in their police service and the system of civilian oversight.

The PAO does believe that the number of venues open to an individual to file a complaint should be limited. Currently, police officers are subject to a public complaints process, civil actions and potential criminal reviews, as well as complaints filed under the Ontario Human Rights Code. These avenues of pursuit may be undertaken simultaneously or one after another. We believe that this places an undue burden on the police officer affected. It also places financial burdens on the local police association, police service, the municipality and ultimately the taxpayer. We recommend that the government explore how to limit the exposure of police officers who must navigate these varied processes.

The proposed legislation allows for the tribunal to dismiss a proceeding in the following circumstances—I've listed the circumstances under the proposed act in the brief, and I won't repeat them here.

I certainly would like to comment on clause (g), which states, "the tribunal is of the opinion that another proceeding has appropriately dealt with the substance of an application." We are concerned that clause (g) is too open-ended. The use of the word "dealt" would apparently not apply to proceedings that are ongoing. We would suggest that the language be amended as follows: "the application raises allegations that are the subject of another proceeding," or, "the application raises allegations that may be the subject of another proceeding in a more appropriate forum." This would allow for the dismissal of an application if:

(1) the substance of the allegation is raised in another proceeding. The proceeding needn't be completed. This is to avoid multiplicity and to make complainants choose one forum;

(2) the substance of the allegation is more appropriately raised in another forum. Again, there would be no need to have the other proceeding completed, but this would help to avoid multiple proceedings and would also prompt the tribunal to encourage itself to be limited to matters where they are acting on serious and substantive matters impacting human rights.

Reasonable restrictions to avoid multiple and unnecessary proceedings must be established to ensure reasonable limits on costs for both applicants and respondents.

In closing, we would like to make it clear that the Police Association of Ontario endorses the principles in Bill 107 and supports its speedy passage. We do believe that reasonable limits should be put on funding for complainants. We also strongly believe that the multitude of avenues of complaint should be limited.

We'd like to take the opportunity to thank the members of the standing committee for allowing us to appear before you once again and for your continued support for safe communities. We'd be pleased to answer any questions that you may have.

The Chair: Thank you very much. We'll start with the government side. About seven minutes each.

Mr. Zimmer: Thank you for your presentation. I know that you didn't want to waste time and didn't get into section 41, which sets out the tribunal's authority to dismiss a proceeding, but I think it's important to get that into the record, so I'm just going to read that in:

"41(1) The tribunal may dismiss a proceeding, in whole or in part, without a hearing, if,

"(a) the proceeding is frivolous, vexatious or is commenced in bad faith;

"(b) the proceeding relates to matters that are outside the jurisdiction of the tribunal;

"(c) some aspect of the statutory requirements for bringing the proceeding has not been met;

"(d) the application is made under section 35 and the facts alleged in the application, even if true, do not disclose an infringement of a right of the applicant under part I;

"(e) the application is made under section 36 and the facts alleged in the application, even if true, do not disclose infringements of a right under part I that are of a systemic nature;

"(f) the application is made under subsection 45.1(3) and the facts alleged in the application, even if true, do not disclose a contravention of a settlement; or

"(g) the tribunal is of the opinion that another proceeding has appropriately dealt with the substance of an application."

Those strike me as good safeguards to have in place in terms of dealing with matters that should not be before the Human Rights Commission or tribunal. Do you agree with that?

Mr. Miller: I agree with you 100%. Our only suggestion is in regard to clause (g), where we think that the language can be tightened up. In some cases, as I stated before, police officers are subject to where a person or an individual will go before body after body after body pursuing the same issue time and time again. It's a very costly process. It's stressful on the officer and frankly it doesn't serve justice. Certainly it's something that's recognized in the criminal courts, where people are charged and, if they're acquitted, that's the end of the event. We see so many different venues where people will be the subject of a public complaint, they'll be the subject of a lawsuit, they'll be the subject of a criminal investigation and of all the different oversight bodies. We're saying that people absolutely have the right to complain, and police officers should be held accountable. But at some point, there has to be a stop put to the multiplicity of hearings available, in fairness to both the officer and ultimately the taxpayer as well, because there are huge costs associated with these hearings.

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I think clause (g) goes some way to address it. We just looked at the language, and we think that the language we are putting forward would allow the commission to still meet its goals and to speed up the process and to be fair to all parties.

Mr. Zimmer: All right. Thank you very much.

The Chair: Mrs. Elliott.

Mrs. Elliott: Mr. Miller, with respect to the different venues that are available to complainants to proceed with complaints with respect to police officers, do you have any idea how many of them actually raised human rights complaints as opposed to any of the other avenues that they might pursue? Or do people often try all of them at once, or consecutively? What's generally been your experience with that?

Mr. Miller: Certainly the majority of citizens, once they've had their complaint dealt with in some forum, are satisfied that justice has been served whether or not they agree with the result. But we do have people who will just try one venue after another, and it just becomes so costly, so time-consuming and so stressful it really serves no purpose at all. Certainly, we do have people complain with the police complaints process. There may be a human rights connection; there may not be. After that's finished, then they go on to the next forum. At some point, the multiplicity of proceedings has to be limited.

I realize the government can't address the criminal courts and the civil courts, but we think that there is a good opportunity here, with two similar processes in terms of police complaints and human rights, that the complainant should, with some assistance, go to the correct forum and then not have the opportunity to go on to the next forum if he or she is dissatisfied with the decision.

Mrs. Elliott: I just have one other question, and it's with respect to the funding availability. Your presentation seems to indicate that you feel that funding should be limited to complaints that are perhaps more of a systemic nature rather than individual complaints, that there should be some province-wide application. Is that not correct? Could you clarify for me on that, please?

Mr. Miller: That's correct, but also they have to be substantive in nature. I think we all realize that with unlimited funding we'd just see a multiplicity of complaints. We have to ensure that they're substantive in nature and should be pursued.

Mrs. Elliott: If there were a complaint that was more individual in nature but didn't have that sort of province-wide application or being more of a systemic issue, would you still advocate funding for that individual?

Mr. Miller: I suppose province-wide application, when you're dealing with human rights, is a difficult question to answer because very often they do have a province-wide application. We just think—you can correct me if I'm wrong—that's it's something that the bill has been silent on in terms of criteria, that something needs to be put in place just to control unlimited funding, because we all know that unlimited funding would be disastrous for the taxpayer.

Mrs. Elliott: We certainly don't have much information on that, period, at this point, do we?

Mr. Miller: We just wanted to alert the committee to that concern. It's something that the Legislature might want to look at.

Mrs. Elliott: Thank you very much, Mr. Miller.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, gentlemen. Your points around clause 41(1)(g) are interesting, especially because section 41 only gives the tribunal the power to dismiss, as compared to dismiss or stay, which is something that perhaps, when we get to clause-by-clause, should be worthy of some discussion, because the tribunal doesn't have much choice either. The tribunal either dismisses or allows the claim to stand/proceed.

I'm wondering whether you'd be interested in power that would dismiss, because that would seem to be logical if in fact it already had been dealt with in an appropriate way. But if it hadn't been dealt with yet in the other forum, a staying, if it was discretionary, would permit the tribunal to simply say, "No, you're not going to go any further here until you find out what happened there." And, depending on what the other forum was, that could give the tribunal an ability to say, "No, it has been dealt with." Do you understand what I'm saying? That then would take it to the point where it has been dealt with. What's the phrase, Mr. Zimmer? You would be estopped. Is that what lawyers say?

Mr. Zimmer: As between lawyers, that's what they'd say.

Mr. Kormos: I think so, yes. You would be estopped. Thank you very much. And that legal advice was worth exactly what I paid for it, yes.

Is that of any interest to you?

Mr. Miller: I have two comments. First of all, our concern is not whether it has been appropriately dealt with or whether it's ongoing. But the question of whether a stay should be added there, frankly, I'd like to check with our solicitors on the matter and get back with some written submissions to the committee.

Mr. Kormos: I think that would be interesting. Your proposal number 2, "If the substance of the allegation is more appropriately raised in another forum," rings as something that appears in legislation already. Mr. Fenson, perhaps you could locate that for us with the help of legislative counsel, because I believe those phrases, that language, is used in some other existing legislation or procedures.

Your position on the commission: I've got to tell you, I was impressed and amazed at the fact that the commission deals with, what, give or take 50% of all complaints without them even going to the tribunal, through alternative dispute processes, mediation, simply having the parties reconcile, any number of ways. That seems to me to be a pretty important function, and saying that, in addition, your concern about frivolous and vexatious complaints that may not meet the test—that are de facto frivolous but don't meet the legal test for frivolous, right? That creates a grey area. Wouldn't the commission be in a very good position to deal with those and protect people from a lengthy tribunal process when in fact a more informal process may well suffice and resolve the issue? Doesn't the commission have value in that regard?

Mr. Miller: We think the proposed legislation is going to work well. We see it really as basically a transferring of responsibilities in some aspects from the

commission to the tribunal. We think that the goal of trying to speed up and expedite the process is a worthy one.

Mr. Kormos: Do you think the commission has any value in the work that it does now?

Mr. Miller: You're asking me a broad overview question. I think there are problems with the commission and with the current Human Rights Code. I think the legislation goes a long way to addressing it. I think we all recognize that a lot of it is going to depend on the quality of people who are put on the tribunal, as with any tribunal. The area that the government is moving to is one that other jurisdictions have looked at. There have been lengthy consultations on this subject, as you know, going back to the 1990s. This approach seems to be well-founded.

Mr. Kormos: But does the commission have any value to the extent that it mediates and resolves 50% of all complaints without them even going to the tribunal? Do you think that's a valuable function?

Mr. Miller: If it is a valuable function—I think you could also look at incorporating some of the same things with the tribunal as well.

Mr. Kormos: Did you hear the proposals for options, in other words, for a person to elect to either go directly to a tribunal with their own lawyers and investigation or to use a commission? Do you have any comment on that?

Mr. Miller: Once again, it's something we'd like to review with our solicitor. But at first glance, certainly the current model and separating the adjudicative process, investigative process and policy process seems to be the way to go, which the government is doing with this legislation.

Mr. Kormos: Thank you kindly. We look forward to your solicitor's views on those two points.

The Chair: Thank you very much.

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JACQUIE CARR

The Chair: Next we have Jacquie Carr.

Ms. Jacquie Carr: Good morning. Thank you for hearing me today.

The Chair: You may begin.

Ms. Carr: Thank you. My name is Jacquie Carr. I'm here representing myself today. Although I'm here by myself, I'm connected to individuals and organizations who have informed my understanding of and are variously engaging some element of human rights in Ontario today.

My active interest in human rights began 10 years ago at the time of my mother's death. My mother, Theresa Vince, was murdered in the Sears store in Chatham by her boss and store manager 16 months after having made a complaint of sexual harassment and poisoned work environment. Needless to say, this was a devastating tragedy for me and my family, including my sister, Catherine Kedziora, who is presenting—

The Chair: Ms. Carr, can I just interrupt? Can you just back off from the mike, please?

Ms. Carr: Sure. Is that better?

The Chair: That's better.

Ms. Carr:—including my sister, Catherine Kedziora, who is presenting here today at 1 p.m., and as a result it became important to me to work for change. Since that time, I have been involved in human-rights-promoting activities and have been connected to many good-minded people who do the same, two of whom include Michelle Schryer from the Chatham-Kent Sexual Assault Crisis Centre presenting here today at 3 p.m., and Marianne M. Park, a consultant who is presenting here at 4 p.m.

I have provided an attachment of my personal background. I don't want to spend my time going into the details of what I've done, but if you are interested in knowing a little bit more about how I'm connected to human rights, it's available to you.

Of all the projects and actions I have been involved in, what I'm most proud of, and which is the most invisible on paper, is providing support and advocacy to people who need so much more than the current Human Rights Commission system offers them. At present, I work in community outreach and development at a neighbourhood resource centre, providing, among other services, support and advocacy to poor, vulnerable and marginalized populations in the city of London.

I support the idea of reform. I support Bill 107 in principle, with amendments. It is abundantly clear to us all that the current system is not working. We have been hearing examples of how arduous accessing the commission is. The commission, as it is today, is overburdened and backlogged. It can take up to five years to complete an investigation and another one or two years for the tribunal process. This seven-year process represents the lucky 6% of individuals who get to the tribunal.

Its role as a champion and advocate for human rights is in conflict with its administrative roles as neutral investigator and as gatekeeper to tribunal hearings. Too often, instead of championing people's complaints, the commission tells them no, they do not have a case, and no, they will not help them. They make these decisions behind closed doors, with no ability of the parties involved to participate. It is very disempowering. The gatekeeping process causes a lot of distrust towards the commission. In 2002, approximately only 9.5% of all callers who spoke with a service inquiry rep about complaints of sexual harassment were sent an intake package. That means 90% were turned away.

Even though in theory it's supposed to be a lawyerless process, in reality those who have a lawyer or advocate do significantly better at being sent intake packages, having complaints accepted, getting beyond the first-step mediation—which to me is a dumping ground where most cases go to either be superficially settled or to die—and if they make it beyond, to a tribunal and possibly mediation after a full investigation, they do better at getting more meaningful resolutions.

The current regime does have barriers that are amplified for the very population the code seeks to protect. One small example I can recall is of a woman whom I

met when I was working at the London Sexual Assault Centre. She was a newcomer to Canada and was being badly sexually harassed by her supervisor. I suggested that one of her options was to make a complaint with the commission and coached her on how to push past the gatekeeping process that happens during these calls. She tried but was told on her first call that she did not have a case. Despite an absolute right under the law to file a complaint, she was denied right away. So next she tried calling again, but this time she called from the centre and introduced me to speak with the service inquiry rep, and then was sent an intake package to begin her complaint. It should never have happened that way. She should have gotten that package on her first call, when it was her making the request. She told me she would not have known to try again after being turned away. If she hadn't had an advocate, her complaint would have ended at the first phone call. This kind of occurrence is common.

Reform can correct these problems. Bill 107 guarantees that claimants will have direct access to a tribunal hearing. The commission will no longer decide which complaints go to the tribunal for hearing. Bill 107 strengthens and clarifies the commission's role as a strong advocate by eliminating its duties as a neutral fact-finder and gatekeeper in individual cases. Bill 107 gives people control over their claims and the ability to fully participate in the investigation, mediation and settlement process.

The following are my recommendations for amendments to Bill 107.

With regard to legal support services, I would like to see strengthening of the commitment to guarantee legal representation for all by changing the word "may" to "shall."

Specify what legal support includes by adding the words "information, advice, legal assistance and representation."

Ensuring access to legal support services is pivotal to building a stronger, more equitable human rights regime. This has always been one of the missing links for individual complainants. Even with direct access to a tribunal hearing, the process is far from lawyerless. Truly, the need is greater, as claimants will take on the responsibility to investigate and compel evidence from those who have violated their human rights. Not many of us are hard-wired with the knowledge and experience required to navigate investigations, conciliations, mediations and settlements. Individuals need advocates too. If the commission will be directing its advocacy duties toward issues related to systemic discrimination, it is imperative that an individual has an advocate who is answerable to him or her.

Legal support services should include legal aid clinics, other community-based advocacy organizations and specialized centres for human rights information and action. To be effective and accessible, they must be properly funded. Please include language to guarantee this.

Legal aid clinics are well able to provide some of this service as long as their eligibility criteria are relaxed to

allow people to qualify, as in the cases of sexual harassment and gendered discrimination.

Expand specialized centres for human rights information and action to include offices that deal distinctly with workplace harassment and discrimination. We have very good specialized offices, such as the African Canadian Legal Clinic and ARCH. An office dedicated to workplace human rights violations only makes sense. Two thirds of Ontarians are of working age. When human rights violations occur at work, they not only infringe on the dignity of the individual and create a hostile environment, but they jeopardize that person's long-term financial security. In my experience, there is a specialized set of knowledge required to support people who are being discriminated against at work. There are labour laws to be considered, unions to negotiate with and potentially intersecting human rights violations occurring. For example, a black woman with a disability working in a unionized work environment will have intersecting violations to resolve based on race, ability, gender and possibly others. If her union is not supportive, she will face the added challenge of negotiating their co-operation. Unionized workers should be able to access these services and not be turned away.

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State that support would be available "to any person who is or has been a claimant," as per the language in former section 86(q) of the Workers' Compensation Act.

Include language that provides for an annual review of the support being provided.

Based on these principles, I propose revised language to section 46.1:

"46.1(1) The minister shall establish a system for providing high-quality support services to any person who is, has been or may be a claimant under this act and to provide information, support, advice, assistance and legal representation to those seeking a remedy at the tribunal.

"(2) The minister shall enter into agreement with prescribed persons or entities for the purpose of establishing this system of support services, and shall ensure that sufficient resources are allocated to this system to enable its functions to be carried out and to ensure that support services are available throughout the province.

"(3) On an annual basis, a person appointed by the minister shall review the functions and operation of this system and shall advise as to the sufficiency of resource allocated to this system, the functions assigned to this system and the scope of individuals who have access to the services provided."

Recommendations pertaining to the commission:

Reporting to the Legislature, which would affect sections 29(i), 31.2 and 57 of Bill 107: The commission should be independent of the government and should report directly to the Legislature.

Qualifications of commissioners: Include language that requires that persons appointed as members of the commission have demonstrated "active involvement and lived experience in human rights" and are "knowledge-

able, with a proven commitment to human rights." Include language to ensure diversity of the commissioners and that they are representative of the community.

The Anti-Racism Secretariat and Disability Rights Secretariat: Many concerns have been raised by disability rights advocacy groups about the structure and intention of the secretariat. The committee should hear from members of both affected communities as to how best to address their issues in the new system.

Duty to co-operate with the commission: Bill 107 should impose a duty to co-operate with a commission inquiry, investigation or review and a duty to provide relevant documents or records as requested by the commission. In the event of non-co-operation, the commission should have the right to file an application with the tribunal to obtain an order to require the production of whatever documents or records have been refused.

Broaden the scope for investigation and intervention: The current language limits the commission's ability to bring its own application to the tribunal to cases that "are of a systemic nature." The commission may be unduly restricted by this language. Before a full hearing of the facts takes place, it would be difficult for the commission to meet these criteria. Allow instead the commission to bring an application before the tribunal if the commission is of the opinion that the application would be in the public interest. Add a paragraph that provides for the consent of the claimant as an important factor as to whether or not the commission should be granted intervention.

Recommendations for the tribunal:

Qualifications of tribunal members: Again, language should be included in the bill that requires that persons appointed would have "experience, expertise and interest in, and sensitivity to, human rights."

Application forms: Currently the language reads that applications "be in a form approved by the tribunal." I would like to see language provided that guarantees that no application will be dismissed solely on the basis of failure to provide the proper forms.

Application timelines: Extend application timelines beyond six months. It's time to change this arbitrary and ineffectual restrictive timeline. Often people experiencing workplace sexual harassment need more than six months to come to terms with what has happened to them, be able to name it, and heal enough from the psychosocial wounds to have the courage to do something about it. The timeline should be two years, consistent with the general standard for civil claims.

Procedural protections: Protections should be in place before the tribunal can summarily dismiss an application. As the language stands in Bill 107, the tribunal can immediately dismiss an application without the requirement of a hearing. Replace the word "hearing" with "full hearing on the merits" and include language that guarantees, where the tribunal is considering early dismissal, that the claimant be entitled to make oral submission to the decision-maker. Provide for procedural fairness; include the right to notice and an opportunity to address

the decision-maker in a preliminary hearing. Require the tribunal to provide reasons for any summary dismissals. Avoid the same dynamic of dismissal powers that is the main criticism of the current commission.

Right to choose alternative dispute resolution: The language allows the tribunal to use ADR methods. Language should be added to provide claimants the right to choose ADR or a hearing as a method of resolution.

Procedural fairness versus efficiency: While it is important to ensure complaint processes are dealt with in an efficient and timely manner, it is imperative to ensure fairness and that complaints are considered on their full merits.

Considering commission documents: Replace the word "may" with "shall." Under the new structure, the commission will be an expert research and policy-making body. The tribunal should be required to consider the policies and documents published by the commission.

No right of appeal: The broad right of appeal that currently exists under the code has resulted in path-breaking tribunal decisions being overturned on their way up the judicial ladder, and often only being restored at the level of the Supreme Court of Canada, at great expense and delay to the claimant, and often nullifying any meaningful remedy because of the delay and expense, even if the decision is ultimately restored. Other tribunals, such as the Ontario Labour Relations Board, are respected and their decisions overturned only if they are blatantly unreasonable. The Human Rights Tribunal is held to a far more stringent standard, which means the court can overturn tribunal decisions solely based on a difference of view of the matter. The reason for an expert Human Rights Tribunal to deal with harassment and discrimination came about because of concerns that courts were not properly addressing discrimination issues. To institute greater deference to tribunal decisions, it becomes imperative that members of the tribunal meet strict qualifications requirements, as indicated earlier.

Fees: Access to a hearing should be without cost. Costs amplify barriers for the most vulnerable. Remove the authority for the tribunal to charge fees for expenses. However, in some circumstances it would be okay for the tribunal to attach a cost to investigations for respondents because of their non-disclosure.

Transferable powers of remedy: Allow any tribunal to have the power to award remedies on the same basis as the tribunal under section 42 of the act, in accordance with the limits of the tribunal's remedial jurisdiction. This helps solve the problem of partial remedies on the part of the court. Currently, the court can provide remedy for injury to dignity, feelings and self-respect, but not for compensation for lost earnings as a result of discrimination. This is a very important part of a person's claim. Human rights tribunals can also include non-monetary remedies that are so important to individual complainants, but courts cannot. Civil actions can be more comprehensive and meaningful if the power to award remedies is based on the same powers as the tribunal.

In conclusion, I applaud Attorney General Michael Bryant for introducing a bill to amend the Human Rights

Code. Bill 107 effectively opens the debate and opportunity for public input into much-needed reform. I thank the standing committee on justice policy for your diligence in this public debate process. I have set before you recommendations for changes to Bill 107 that I believe are necessary in order for human rights protections to be fully accessible and effective for all.

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Most importantly, I ask that the bill include language to ensure mandatory funding for legal services; that there be no user fees; that greater powers to intervene in hearings be assigned to the commission; that greater limits, in accordance with procedural fairness, be assigned to the tribunal's powers to summarily dismiss claims; and that stringent qualifications be followed for commission and tribunal members. Thank you.

The Chair: Thank you. You were just right on. There is no time remaining for questions, so thank you very much.

BARRIER BUSTERS

The Chair: Next is the group Barrier Busters; Tracey Roetman.

Ms. Tracey Roetman: Good morning.

The Chair: Good morning, Ms. Roetman. You may begin any time.

Ms. Roetman: I don't like this and I'm not really comfortable talking about needless pain. I have come to know a lot of good, knowledgeable people. My grandfather was a World War I vet and my father was a World War II vet for Canada. I have a stake in this country and I have a stake in this province and I believe, with what is going on in the world, we should define ourselves as good and decent human beings. I will go on fighting for what is right, but I want you to back me up. I want what is fair and good and honest. Let's define who we are as a country and as a province. We are smart, working and tolerant, and we are asking, but we're inviting everybody to do the same.

I am going to share with you some of the things I have observed about the rights and the lack of rights of people with disabilities with whom I have worked. I have experience as a volunteer and as a staff person in the field of accessibility, and as a long-time advocate working to improve the lives of people with disabilities. I ask you to have an open mind and to listen carefully to the concerns I will be expressing and also to the real-life situations of not only myself but others with disabilities in my community who can't be here today.

As pointed out so clearly in the Ontarians with Disabilities Act and the Accessibility for Ontarians with Disabilities Act, the province recognizes that widespread attitudinal barriers not only exist but need to be identified, removed and prevented in the future. Others often do not say or do the right thing much of the time, even though they may believe in it psychologically and even when they are legislated to do so. Attitudinal barriers are often a result of a lack of understanding of the other

person's situation or perspective. Many people don't like to admit they don't understand, which often creates a defensive point of view.

I am concerned about those of you who will be making the decision about what Bill 107 contains, as you may not understand the extent of the discrimination, the struggles for basic rights and the lack of opportunities people with disabilities face each day. You need to hear about the real-life experiences of ordinary people with disabilities.

If you're not experiencing discrimination personally as a result of being a person with a disability, the only way you can understand how the legislation will affect many people with disabilities in this province is for you to listen. Begin to understand the situations we face and then put legislation in place which will make our lives better, not more complicated. We don't need more barriers created; we need barriers removed.

Having a disability costs money. I can explain my own situation. It cost my family \$70,000 just to get me into my house. Tires for my wheelchair average about \$500 every three months. My new accessible van averages about \$1,000 a year in repairs, just for my ramp. I could never afford to pay a lawyer to represent me every time I face discrimination as a result of my disability.

You can't comprehend what people go through when their lives are totally disrupted as a result of a disability until it happens to you. The first five years of my disability were the most difficult. I went from being a totally independent, able-bodied person to a completely dependent, disabled person. Not only did I have to come to terms with my loss of independence and suffer low self-esteem, but my way of doing ordinary things was totally changed forever. I couldn't get up by myself, dress myself, bathe myself, feed myself. The pain was incredible, and not just the physical pain. The change in my quality of life was overwhelming. I no longer was the mother, the wife, the friend or the person I once was. I was struggling and my family was struggling. We were all going through grieving.

In the five years that I was confined to my bed, life was difficult, and more difficult than it needed to be. In the midst of this, I faced a constant battle for adequate home care with the community care access centre, a battle we neither needed nor wanted. We were told that I did not fit into the guidelines or criteria that home care had. I was told I had to sign up to go on a waiting list for a long-term-care facility, which neither my family nor I wanted. I was told I had to sign up to go into a supportive housing unit or my care would be cut. Did I want to give up our family home? Of course I didn't. Did I feel I had a choice when it came to where I lived? No. I felt incredible pressure to do what I was being told to do, to accept what was someone else's solution to the long-term impact of my disability.

The community care access centre then asked my 17-year-old daughter to stay home from school and take care of me. I explained that this was not an option; she was already struggling with the significant changes in our family life. Shortly after that, they had a meeting with me

and my daughter. She tearfully told them she was neither giving up her school nor leaving her family home. There are no words to explain what this did to me. I could not agree to do what they asked because my daughter's future was at stake. I felt that both my daughter and I were being treated unfairly. Did they have the right to deny her an education because I had become disabled? Did they have the right to deny me the services I needed to be as independent as possible? You answer these questions. Should I have taken this circumstance to the Human Rights Commission in order that we both be treated with fairness, equity and dignity?

I was not sure about what to do next, but fortunately for me, the March of Dimes outreach service entered our lives, and what a difference that made. I was able, with assistance, to gradually gain more independence and to once again become a mother and a wife. When your kids and your husband are your primary caregivers, it affects the relationship in a big way. They stop thinking of you as a mother or a friend or a lover, and to them, you don't seem like the same person you once were, before you had a disability. And you're not.

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You will understand when I say that no one with a disability wants to file a human rights complaint. They neither have the time nor the energy. Just managing to live day to day is in itself a huge struggle.

Many of us, myself included, deal with ongoing health issues and unforeseen challenges as a result of our disability, which are difficult enough to accept. But when we must also navigate alone—because there seems to be no clear information, and it's like they want to keep it a secret—the complicated system of government bureaucracy to figure out how to receive assistance to manage on a daily basis, we need to have our rights guaranteed in law without additional stress and complicated processes.

Emotionally, dealing with my disability and health issues often becomes overwhelming. Not only have I lost much of my privacy, but my family and home life are much more complicated and my health issues impact how I'm able to cope. The loss of independence I still struggle with requires that I am constantly told how I will be taken care of. Many daily decisions are made by others. While these decisions are essential, I have very little control over many of them. I face countless needless barriers, and I am often discriminated against simply because I'm in a wheelchair. I don't think I could handle the emotional stress of having to launch a human rights complaint myself against an organization, which would result in a long, complicated and stressful process—and I'm a strong individual.

As I got better and got out in the community, no matter where I went I was continually told about other people's struggles and challenges. A schizophrenic tearfully told me of his 93-year-old mother who was unable to take care of his father. The mother was told by the community care access centre that they could receive no help because the son was able to provide care. This man was desperate, and his pleas were falling on deaf, uncaring, hardened ears. Did this help lessen the son's

stress? Is this an example of a family member capable of providing care? Should the son or the mother have taken on the additional burden of having to launch a human rights complaint by themselves?

A neighbour of mine who has an extremely bad heart condition has a spouse who developed Alzheimer's. He was told that he could take care of his wife alone. He tried and shortly afterwards had another heart attack. Space was found for her in a nursing home. The man had to drive 80 miles daily to visit her, when all he had been asking for was a few hours a week of home care so he could have assistance to support his wife.

Why are caregivers put in the position of having no control and no rights to decide what is best for their loved ones? The community care access centres should be adding services, not cutting them. Many long-term facilities and other institutions have long waiting lists of people who neither want to be there nor need to be there. In many cases, all the family needs is a few hours a week of home care for their loved ones to remain independent and happier in their own home, surrounded by supportive family members. As well, this solution is less expensive for everyone in the long run.

Another individual who had been receiving three hours a week of home care for nine years was told she no longer qualified. Many people are told government cut-backs are responsible for these changes. When they placed this emotionally upset woman in a home, she steadily declined, stopped eating and was dead in three months. How many more people must die before the law ensures people have the help they need without having to launch human rights complaints?

I advocated for a mother with two severely disabled sons, ages eight and 10, who requested housing through Ontario Works. Dad had left, which is often the case. Both boys had a life expectancy of 16 years, and their health was continually deteriorating. All she wanted to do was give them an accessible home with a yard and a decent quality of life for the time they had left. Should she have had to launch a human rights complaint to ensure that she and her sons with disabilities have the right to accessible housing? I don't think so. Families already burdened with the stresses of overwhelming illnesses and drastic changes to family structure need proper support and the right to accessible housing.

Parents of children with disabilities are put in the position of having to give up their jobs in order to care for their children. I know several people in this position in my own community. They continually struggle to find sources of support: financial and respite care. They advocate for their children, often on a daily basis, with the school system, the government and service agencies. They have neither the time nor the energy to launch a human rights complaints, and their children's needs come first.

We know that over the next five years—sorry, we're having technical problems.

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Mr. Kormos: Chair, there has been much comment on the contrast between the existing Human Rights Code

and the appeal provisions as compared to the judicial review powers or appeal available under the new act. Could the research officer give us some background on what types of tribunals are ones where the decision is final but for the Statutory Powers Procedure Act as compared to litigious or court-like tribunals where the right of appeal is deemed an inherent part of the process, as compared to the restricted judicial review? Do you understand what I'm asking for? What types of appeal processes apply to which types of tribunals in the general, broadest sense, and what's the rationale for the limited power of appeal in an administrative tribunal as compared to the very broad power of appeal, let's say, in a court process, be it civil or criminal?

The Chair: If you could continue—

Ms. Roetman: I'll continue with what I have because they don't seem to be able to get this on screen.

We know that over the next few years one in five Canadians will have some form of disability. When I think of the numbers, it affects me: one in five. That's my immediate family; that's my closest friend. I believe that to think you're not going to be affected by a disability is naive.

I receive referrals for individuals with disabilities who need help navigating the system to access the services they need. I try all avenues I know, and some people's situations still fall through the cracks of the system. I often refer them to agencies and other organizations and sometimes it's a really easy fix. Sometimes the challenges the individuals are facing are monumental, and help just doesn't seem to be there. How can we, as a society, guarantee that people with disabilities have the same rights as everyone else without having to launch many human rights complaints?

Daniel: I started working with Daniel in the fall of 2004. Daniel could be any one of us. Daniel suffered a work-related accident. Daniel was a kind, caring, modest man who was thankful for the smallest thing anyone did to help. After years of trying to navigate accessible housing and home care and not receiving the help he needed, Daniel died homeless and alone. Although I know I did all I know how to do, I wish I could have done more and feel the system let him down. I wish I could be having a coffee with him today and that he could be making plans for getting his health back.

Daniel, my friend, I'm sorry we were unable to do something sooner, for I believe that if we could have, you would be with us today. You will live on in my heart, and you will be my inspiration to work hard to do away with the lack of support, assistance and services.

Did Daniel not have a right to accessible housing and home care?

Billy: Four years ago, Billy was at work and had a tragic accident that left him paralyzed from the shoulders down. Billy came home four years ago with written instructions on how to address his health issues. He knew the outcome if he did not receive immediate care. Three months ago, I was called when the doctor in emergency would not follow the specialist's instructions, something

that could have killed him. When you are paralyzed to that degree and your body gets an infection, you get a killer headache, your blood pressure shoots up to the point that it could kill you and you need medication immediately. The doctor on call refused to even read the papers from Lyndhurst. Advocating saved his life, but he is still waiting to be flown out of the Sault so that they can resolve the cause of the infection. He has been in the hospital for the past three months and has been waiting to be sent to either Ottawa or London for specialized care. Needless to say, he's getting weaker and weaker. Should Billy launch a human rights complaint while in a serious medical crisis because his rights to medical care and to be heard are being ignored? Many people with disabilities are treated as though they are uneducated, ignorant of their own needs and helpless. This is a serious attitudinal barrier.

People who interact with the public, particularly those people involved in health care, must learn how to treat people with disabilities with dignity and respect. This is the individual's right. As stated on the Ontario Human Rights Commission's website, "Protecting human rights is everyone's responsibility. We all have an obligation to respect each other's human rights and to speak out against discrimination and harassment for ourselves and for others." I quote from the policy: "Respect for the dignity of persons with disabilities is the key to preventing and removing barriers. This includes respect for the self-worth, individuality, privacy, confidentiality, comfort and autonomy of persons with disabilities."

Rhonda was labelled as "retarded" or, more correctly, as developmentally delayed as a child and spent most of her life in an institution, something she still has nightmares about. She has cerebral palsy. Her speech is impaired, as is her movement, but her IQ is higher than most people I know. Her courage and tenacity have been an inspiration to all of us who have had the pleasure to know her.

At a forum on accessibility issues, Rhonda stated, "Although I have a disability, I have great ability. I am happy to be here this evening and thank you for the opportunity to voice my concerns. I, like a number of individuals, am dependent on Parabus for transportation. I serve on a number of committees and volunteer. It is enormously frustrating booking busing. There have been a number of times when I've arrived hours ahead of time for a meeting and left a meeting before it's over. I was so upset at one point that I thought of quitting, although others talked me out of it. You need to understand that for those of us who are dependent on this system it's humiliating and yet another situation where the impact leaves us feeling a child-like dependency. It reinforces the second-class citizen feelings and limits our opportunities, robs individuals of dignity and keeps us from enjoying community life. We have no desire to be housebound. We would appreciate you addressing this issue."

1210

I think this situation shows that Rhonda is clearly not developmentally delayed. Does she not deserve assist-

ance now to overcome the early difficulties she faced? If the human rights legislation protects the rights of people like Rhonda to an appropriate education and assistance, as required, without having to go through a long, complicated, time-consuming and costly process, there will be more opportunities for people with disabilities to be productive members of their communities and children will be treated with the dignity they deserve.

Sylvia, or Sy to her friends, was also born with cerebral palsy and started out at five having to attend a school 80 miles from her home because there was only one school in 200 miles that took on special-needs students. Every Sunday night for years she cried herself to sleep.

Years later, Sy went on to get her honours degree in English, and she now writes a column for a local newspaper on disability issues. Sy receives \$400 a month from ODSP. Since she graduated from university several years ago, the government has continued to harass her non-stop for repayment of her student loans. Tell me, how is she to do this on \$400 a month? Should she repay the loan and not eat? This kind of treatment doesn't respect her dignity, doesn't give her credit for her intelligence, tenacity and strength of spirit, and it is insensitive and demeaning.

Ron, in April 2005, was crossing at the international border at Sault Ste. Marie, Michigan and Ontario. His mother was born in the US. He was denied entry into the United States. He was going to travel down I-75 and re-enter Canada at the Sarnia/Port Huron international border. He and his friend were going to visit relatives residing near Sarnia. The duration of time within the US would have been no longer than approximately six to seven hours between Sault Ste. Marie and Port Huron, going down and coming back again.

At the American border, Ron, the driver, and his passenger were told to empty their pockets and wallets for inspection while the vehicle was being inspected. In their possession was identification, Canadian currency, cigarettes, personal belongings for the trip as well as the driver's personal medication. All customs officers, for the most part, were friendly. When asked what the driver's medication was, without hesitation Ron explained that he was HIV-positive and that his medication was part of an antiretroviral therapy. Immediately, the officer holding the medication and another officer examining the passenger's ID placed the objects on a nearby table and, palms facing upward, slid the objects away from them. The officer inspecting the vehicle was told to discontinue inspection and all the officers went behind closed doors. The two individuals undergoing this routine check were left for approximately 10 minutes, supervised by surveillance cameras. Upon their return, access to the United States was denied. Ron and his passenger were escorted to a detainment facility for questioning. Interrogation began regarding ownership of the vehicle and Ron's true identity. Disturbing phone calls were made to his elderly mother, investigating her American citizenship.

It is understandable that during a routine border investigation criminal records are searched for; however, neither party had a criminal record. Ron was then taken privately into a room while his passenger was left sitting in the public office where other travellers were entering and exiting at will. The passenger asked how long the wait was going to be and if it was possible to make a phone call to inform family members of the detainment. The response was, "Shut up and sit down before things get really uncomfortable." The passenger was ignored from that point onward.

The Chair: Ms. Roetman, sorry to interrupt. Your time is just about up. Could you please summarize in a couple of minutes?

Ms. Roetman: Sure. I'll let you read this at your leisure.

Most individuals with disabilities have neither the time nor the energy, and a lot of individuals like myself don't have the money, because being disabled is expensive. I would like you to remember these individuals and protect their rights. Although my background is in inspecting buildings for accessibility, advocating has taken up a big part of my life, and it's all unpaid hours. These people have nobody else. It's a complicated, convoluted system. We need to make the laws stronger, not weaker, because even though people believe it's right, until they're mandated to do it, they won't.

I would like to close with a presentation that we developed in the Soo, because I think it's really effective. I think this is what you guys need to think about when you're making changes to this bill.

Audio-visual presentation.

The Chair: Thank you very much.

We'll be recessing for an hour for lunch. We'll meet back here at quarter after 1.

The committee recessed from 1222 to 1322.

CATHERINE KEDZIORA

The Chair: Good afternoon. Our first presenter this afternoon is Catherine Kedziora.

Ms. Catherine Kedziora: Good afternoon.

The Chair: You have 20 minutes. You may begin.

Ms. Kedziora: Thank you. I'm feeling a little bit like a fish out of water, so please bear with me. As you know, my name is Catherine Kedziora. I have come here today representing myself and a portion of my family.

My interest in human rights began some 10 years ago with the death of my mother, Theresa Vince, at the hands of her boss, the manager of the Sears store in Chatham, who had been sexually harassing her for at least two years prior to her death. During the process of the inquest into her death, I became aware that there were flaws in the way that our Human Rights Commission handles or, in some cases, doesn't handle complaints of sexual harassment.

One of the things I've come to learn is that Canada—and it doesn't give me any joy to say this—ranks fourth in the world for sexual harassment complaints. That is

startling to me. I also know that 75% of female high school students report incidents of sexual harassment and gender discrimination in the halls and the classrooms of our schools. That, to me, is unacceptable. I also am aware that out of 100 persons who file a complaint of sexual harassment, only 9.5% are sent an intake package, which means that 90% of the complainants are turned away without due process, so to speak: without an investigation, without a hearing and, for lack of a better phrase, without any justice. Of that 9.5% who are lucky enough to receive the intake package and are lucky enough to be able to go forward, they are bogged down in a seriously backlogged system and can wait up to five years to get an investigation and then another one to two years for the tribunal to process everything and get to a hearing. So you're looking a seven-year process, which represents only 6% of the individuals who make complaints.

This would have been no remedy for my mother because from the time she made her first complaint to Sears Canada she was dead within 16 months. She never even would have gotten, I'm sure, past the intake package stage, if she were to even receive one, nor would it have been a remedy for Lori Dupont, who was dead within a year. And it is certainly not a remedy for a single mother I know who was fired from her job four months ago due to pregnancy-related restrictions and absenteeism. She just received a phone call for the first time from the commission last week telling her that they're looking into her complaint—not that she was getting an intake package, not that she was getting a hearing. Nothing was moving forward, just that they were looking into her phone call.

This is a woman who is still experiencing serious pregnancy-related issues and who, under doctor's orders, has been on strict bed rest. She has no job, no source of income, and now she is dealing with the added stress of an overburdened and basically unsympathetic commission. I have to ask myself why, because I've asked that to myself several times in 10 years. I don't have any answers yet and the commission hasn't been able to give us any answers over the course of the 10 years.

It's my full belief that it's the commission's role to advocate for human rights, but far too often, instead of people's complaints being heard, they're dismissed via the use of some obscure code denying complainants their right to a hearing. These decisions are not made in full view of the public eye but behind a closed door and in secret, stripping the persons involved of their right to a fair, expeditious process. This is not justice, this is not advocacy and this is not a remedy for the people of this province.

What it equates to is a natural disdain and distrust towards a commission that in its fruition was meant to serve and protect the rights of Ontarians, not dismiss them. It is unfathomable to me that a complaint can be arbitrarily dismissed based on an initial phone call or that complainants not receive an intake package because the initial phone call is still under review, as with the case of the single mum I spoke of.

I thank God and I praise the efforts of advocates out there. They are very few and far between. She is lucky enough to have in her life some advocates who care enough to intervene on her behalf or this mum would have fallen within the 90 percentile, and I'm not convinced she still won't.

There's an old saying: If it isn't broken, don't fix it. I cannot in good conscience apply that to our Ontario Human Rights Commission, but it is my belief that Bill 107 can correct the problems I've laid out. It will guarantee full and direct access to a tribunal and eliminate the excusing of complaints by the commission. Bill 107 will help renew the public faith by putting the commission back in the role of an unbiased fact-finding body and, most importantly, give people back their control and offer them the ability to participate fully in the process rather than stand idly by while the process happens to them, leaving them frustrated, hopeless and demoralized.

I know people are going to want amendments, but there are only a few that I'd like to offer to you for consideration. Under legal support services, I would like to see the language strengthened on the commitment to the guarantee of legal representation for all. This should include, but not be limited to, legal aid clinics, community-based advocacy organizations and specialized information centres geared to human rights actions, offering specialized legal counsel by qualified people in the areas of sexual harassment and gender discrimination with guaranteed full funding.

1330

No one should ever be turned away from the process for any reason, including funding. I'd like it made more distinctly clear that no user fees should be applied to anyone using these services. I'd also like to see the language "full hearing" replace "just hearing" when dealing with complaints to the commission and the tribunal, which eliminates the ability of either body to dismiss a complaint without process, as well as removing the tribunal's ability to exact costs on complainants. Costs should only be levied, in my opinion, if a respondent does not offer full disclosure and purposely hinders the process.

I know there are going to be a lot of people from all walks of life who will be adding their voices to this process. There will be people who oppose Bill 107 for being exclusive. I don't believe, in the heart of the bill, that it is. I believe the intent is meant to be inclusive and, in my opinion, it gives a way for opponents to the bill to find their way within it. Finally, there will be people who have more knowledge, more statistics, more experience than myself, and I'll leave it to them to pick apart all the wording issues. I'm here today as a person who wants to offer a submission based on my years of knowledge and experience. In that experience, I've come to a startling conclusion: As it stands today, our Human Rights Commission offers few remedies to Ontarians.

I wish to express my deepest gratitude to Ontario Attorney General Michael Bryant for introducing Bill 107. It was that act which gave rise to the opportunity

that I have here today to lend my voice in some small measure in support of Bill 107. I want to thank the standing committee for the opportunity to speak and be involved in the public debate process of Bill 107. I wish to say that it is my firm belief that for human rights protection to be fully accessible and effective the bill's language should include legal funding. Representation and services must be made available to provide information and advice. No user fees should be attached. The minister should develop a system of high-quality support, ensuring:

- funding throughout the province which is subject to an annual review;

- the commission report directly to the Legislature;

- exact qualifications are met for members appointed to the commission and the tribunal that include but do not limit them to experience, interest, sensitivity and expertise in human rights.

I am cautiously hopeful regarding this process and pray that the committee continues its open-mindedness and takes full advantage of the expert opinions brought forward to you by the people of each community while you move through this editing process on Bill 107.

Finally, change is not easy but it is important, as it keeps us moving forward into the future—and the future does bring hope. It is not something to be feared but should be embraced. Bill 107 is, in my opinion, a positive change and should be embraced as a firm step forward for human rights. Thanks.

The Chair: Thank you very much. We'll begin with Mrs. Elliott.

Mrs. Elliott: Thank you, Ms. Kedziora, for your very thoughtful presentation. You raised some really important points, I think, one with respect to the issue of backlog. That's certainly reducing the efficacy of the commission, which needs to be dealing with complaints on a timely basis. I also have heard time and time again of complaints that have taken years to get to even the issue of dealing with them.

Secondly, your point with respect to people having the ability to have their complaint dealt with on the merits—the issue that I'm struggling with is with respect to whether the direct access model is going to be the answer to it. My concern is that though the individual will have their complaint being heard, I wonder what you see as the commission's role with respect to systemic discrimination issues. Would you like to see the commission have a more enhanced role in terms of looking at complaints of that nature, or do you think they could also be dealt with by the tribunal?

Ms. Kedziora: I believe the commission should be involved as a body of fact-finding. So the issue of systemic discrimination should probably fall within the tribunal's—

Mrs. Elliott: Jurisdiction?

Ms. Kedziora: —jurisdiction. Thank you very much.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you very much for coming here today. It's going to be a lengthy debate. It's going to

carry on well into September after the House resumes, because of course the government had to pick whether it wanted to prioritize Bill 14 or Bill 107, and it picked Bill 14. So we're here in London today. We're going to Ottawa tomorrow and then Thunder Bay. Then the rest of the break, in terms of committee hearings, is going to be spent with Bill 14. After the House resumes—when, September 23, Chair?

The Clerk of the Committee (Ms. Anne Stokes): September 25.

Mr. Kormos: —on September 25, we'll be back on Bill 107. Thank you very much.

The Chair: Mr. Zimmer.

Mr. Zimmer: Thank you very much. We heard from your sister this morning also. I do want to thank you on behalf of the Attorney General for the support you've shown for this legislation and also for your very helpful suggestions on how it might be made even better.

In that regard, I want to read you a commitment the Attorney General made in the Legislature. It's in Hansard. I'm reading an excerpt of it here. It's dealing with section 46.

"Section 46 of the bill does make reference and entrenches the first-ever human rights legal support centre, but the McGuinty government recognizes the need for clarity and endeavours to bring even greater clarity to this bill, long overdue, and this reform, long overdue. So to answer the question directly, we do intend proposing amendments at the appropriate time to section 46 in order to bring even greater clarity, not only to section 46 but to the entire human rights process, and we look forward to hearing from all Ontarians and all members of the committee on that front."

In effect, what you're doing today by taking your time and organizing your thoughts and sharing them with this committee is assisting the Attorney General when he presents the amendments to the bill, which are designed to make it an even better piece of legislation. Thank you.

Ms. Kedziora: Thank you very much.

The Chair: Thank you for coming this afternoon.

Ms. Kedziora: Thank you for your ears.

LORIN MacDONALD

The Chair: Next we have Lorin MacDonald. Good afternoon. You can start.

Ms. Lorin MacDonald: Good afternoon. Thank you for allowing me to present. My name is Lorin MacDonald. I'm a law student here at the University of Western Ontario. I have a severe to profound hearing loss, and so I'm certainly no stranger to the effects of discrimination and barriers as a person living with a hearing loss and a disability in our province. I've also had the opportunity to study legal aspects of the legislation in my studies. Certainly, as far as I'm concerned, human rights legislation is just secondary to the Charter of Rights and Freedoms. I've taken a great interest in Bill 107 and what it offers.

Everyone agrees that reform is necessary. I don't think anyone will dispute that fact. Where we differ is in what kind of reform is needed. I think that's why we're having these public hearings now and why over the course of the three cities you're going to visit you're going to hear from a wide range of people from the different communities who are the major users of the Ontario Human Rights Commission. They're going to be speaking out, I would assume, majorly against Bill 107 in their opinions on how it can be strengthened. There's a reason for that. I think it's important to listen to the feedback from these consumers who are going to be using the Ontario Human Rights Commission.

1340

I want to say that I agree with the general positions that have been put forward in the AODA Alliance's draft submission on Bill 107. I don't want to get into going over a lot of their points, because it just becomes redundant. You're going to hear a lot of that over the course of the three cities that you're going to visit. But I will give you a personal story, because I think that's the thing that's going to mean the most to you, when you do hear the personal stories of people who have been through the discrimination and who have used the Ontario Human Rights Commission in the past. Those are the things, I think, that are going to hit home to you, that are going to be the things that you are going to remember the most when you've finished with this process.

I can tell you I have it on good authority that I myself could not afford to hire a lawyer, nor would I feel comfortable investigating my own complaint, if Bill 107 goes through and the effects, as it stands right now, happen, because I'm in the process of going through a situation right now where that's what would happen if this goes through. I can tell you that the situation that I have is something that has been ongoing, and I have tried my best over the last four years to resolve it on my own. I'm a law student, so I'm pretty well versed on how to be articulate, how to work with the system, how to present a case, how to use precedent, how to bolster support for my position—and I'm getting nowhere.

So I'm thinking, how would other people with disabilities, who perhaps are not as able as I am, who are not as strong self-advocates as I, fare in such a situation? I'm thinking "not as well," because I can tell you from personal experience that it's been extremely difficult for me to go through this process over the last four years. It's not over yet. I've been very fortunate that I have a lawyer now who has been generous with his time to take this case on for me on a pro bono basis, because I'm a law student. I cannot afford a lawyer on my own, to pay a retainer. If I were to take this to the Ontario Human Rights Commission under Bill 107, if it passes, I would have to pay a lawyer to do this. I can't do that. I'm not in that kind of position. So I'm thinking, for a person with a disability who is not as capable as I am or who doesn't have the skills that I may have, what kind of position would they be in? That's why I'm trying to look at other

persons who are not in the same position and how they would fare. That's the concern I have. I think in London for the rest of today, and in Thunder Bay and Ottawa, you're going to hear a recurring theme.

I also would like to remind you that all of you are elected MPPs, and I believe this is going to become a voter issue and that you're going to hear from the communities that you serve and the ones who are affected by Bill 107, much like the AODA back in 2004. I'm sure you did hear from the communities that were concerned about how the AODA was shaping up. I was very involved with that whole process, and I can tell you that it was very, very moving to see how that whole process came together, how we had the disability community, government and the private sector all working together. It was a tremendous, tremendous day when that bill was passed. I was in Queen's Park when perhaps several of you were in the Legislature when all voted a resounding yes, not only verbally but with sign language. I can tell you, that was the most profoundly moving day of my life.

To get to that point, it took tremendous partnership; many of us were concerned because we had raised with the McGuinty government, "Wait a minute; there's no enforcement mechanism in this bill." We wanted to see something in there, because what if there's a problem? We wanted to make sure that there was some kind of mechanism. We were told not to worry about that because, "You will always have the Ontario Human Rights Commission there to take your complaint, to investigate, to prosecute whatever; that would never go away." So even though the AODA didn't give us everything we needed, we felt that it was still pretty good legislation and we threw our support behind it. So when that day happened in May 2005, it was profoundly moving. I know that many of you were in that room and gave your support to that bill.

So imagine my tremendous disappointment when the Attorney General put forward this Bill 107. I didn't understand what was going on, because I thought, "Here's the government that's taking away a lot of the tremendous goodwill that it had built with the community"—with the disability community, at least. We very much wanted to work with the government of the day because, remember, this had been years and years of disappointment with the Conservative government before you—before the Liberal government. My apologies to the NDP government, which certainly has been a tremendous champion of disability rights, and the Conservative government, not so much. Apologies to those who are here at the table.

We were very hopeful that this time the government of the day, being the Liberal Party, was really going to work with the disability community. We dared to believe that this was finally the partnership that we were looking for, and then Michael Bryant put forward this bill. We thought, "This can't be right, this must be some misunderstanding or some partnership gone wrong," or whatever. However, we're still very hopeful, with these public hearings and what you're going to hear over the

next few days, that it's not too late. This bill is not a fait accompli; there's still much work that can be done to rectify this. So I know that you will be hearing much over the next few days.

My belief is that Bill 107 needs to be seriously amended. At the end of the day, I think complainants need to retain their right to a public investigation and they need to have full legal support at tribunal hearings. That's pretty much my bottom line.

The breach of understanding that happened between the AODA and Bill 107 needs to be cleared up, because you've got a lot of members of the disability community in Ontario who are quite disillusioned. This is the community that gets disillusioned time and time again. That should not be happening. I think we are often the most marginalized in Ontario. This is an Ontario that the Premier says works for everyone. Again, I can tell you on good authority, from personal experience, that it doesn't. It still does not work for people with disabilities, and it needs to stop; it needs to stop now. There's no reason why people with disabilities in this province—it seems to be the last frontier when it comes to civil rights. You would not think of treating women in a certain way; you would not think of treating aboriginal peoples in a certain way; you would not think of treating visible minorities in a certain way. But when it comes to people with disabilities, it seems to be okay to still give them the short end of the stick when it comes to their rights. There is absolutely no reason, when it comes to a province as rich as this, why this should be allowed to continue.

1350

So I implore this province and those around the table who have the power to do so to listen to what you're hearing over the next few days and seriously consider our feedback and do what you can. We all agree that reform needs to happen—no question. But let's do it right. It has been 40 years since we've done these reforms. What's the rush? Take your time; do it right. Make it fairer for everyone who comes to the table and make it the right thing for everyone who uses the Ontario Human Rights Commission.

The Chair: Thank you. We'll start with Mr. Kormos. Any questions?

Mr. Kormos: How much time do I have? Err on the side of generosity.

The Chair: A little over two minutes.

Mr. Kormos: Ms. MacDonald, thank you very much. I get excited when I meet young, bright lawyers and law students. There are a few of us who were young law students at one point in time, but we're well beyond that stage.

Mr. Zimmer: The question is, are we still bright?

Mr. Kormos: I left the "bright" part out. I don't want to speak for anybody, least of all myself, in that regard.

Thank you very much for coming in. We're going to move on to Mr. Zimmer, and he, dollars to doughnuts, is going to look at his BlackBerry and pull out—but the Attorney General promised the funding in the House, as if somehow promising it in the House gave it any more impact as compared to saying it anywhere else.

One of the big complaints I get in my office is availability of legal aid. Your income is so low to get a legal aid certificate, and even at that—for instance, family law legal aid certificates: Family law lawyers won't take them because they're capped. They won't provide for enough preparation time.

So I appreciate Mr. Bryant. I watched his lips move when he made that promise. I appreciated him promising it, but the devil's in the details. I want to know—and maybe you do too—are there going to be a legal aid certificate? Are there going to be legal aid panels? Are there going to be clinics? Heck, if it's going to be a clinic, why not just keep the commission and the prosecutorial role that the commission plays? I'm anxious to hear what Mr. Zimmer has to say to you about how this support—is everybody going to be entitled to it or is there going to be a means test? These are the questions I have. Do you have any of those concerns?

Ms. MacDonald: I think the concern with Bill 107—and we've certainly heard this—is that the only people it really benefits are the lawyers. Shocking, eh?

Mr. Kormos: Once again.

Ms. MacDonald: Yes. Another concern I've had is that we're hearing a lot of promises from the Attorney General that there will be more amendments forthcoming, but the community hasn't seen anything, so how can we fairly comment or feel assured that we're going to get what we need if there's no clarification and if we're not getting the full picture? We're not feeling confident about the bill.

I hesitate to say “smoke and mirrors” because that's not fair. I desperately want to work with the government, because it did a lot of good when we were formulating the AODA. That was a tremendously positive experience for the community. I sit on the customer service standards development committee with the AODA. We've just rolled out our first standard and we're very, very happy with it. That was a very positive experience. I elected to sit on a standards development committee within the government because I wanted to be part of that process inside the government. I didn't want to be on the outside, because I very much believe in working on the inside. So with this process, I want to do the same, working inside the government. But when it comes to this bill, I'm not seeing any of our questions being addressed. How can we comment or feel any kind of assurance until we get some of those answers? As law students, we're being taught we can't address anything if we have nothing to look at.

The Chair: Thank you very much. Mr. Zimmer?

Mr. Zimmer: Just to respond to your comment—and I thank you for your support and the constructive criticism that you offered. We want to work with the community to make this an even better bill.

You offered the comment that the community hasn't seen anything by way of amendments yet. Let me just say this. First, I did have my BlackBerry out before and I read the commitment the Attorney General made in the Legislature, for instance, on section 46, to ensure that

there was sufficient, proper and effective representation. He also went on in that quote to say that he was entertaining amendments to clarify a number of matters and make the legislation even stronger.

I should say that that commitment the Attorney General made in the House was in response to a question from Deb Matthews, who is here at this table as the member for London Centre. Deb Matthews raised this concern in the Legislature, and the Attorney General answered her and the Legislature directly with his commitment.

What these hearings are all about, of course, today in Ottawa, tomorrow in Thunder Bay, and then hearings in Toronto, the extensive written submissions that we've received, the advertisements that we did asking people to attend here, to send in their written submissions—the work of this committee is to listen carefully to everything that stakeholders such as you say. This committee, when it completes its hearings, will meet and report to the Legislature. I expect that that report to the Legislature is going to contain a number of suggestions to make it an even finer piece of legislation. So together with this all-party committee's recommendation and the Attorney General's commitments that he made in the Legislature, I'm sure we will address your concerns.

The Chair: Mrs. Elliott?

Mrs. Elliott: Ms. MacDonald, totally as an aside, I just wanted to say, as a fellow Western law school grad, I hope you're enjoying your law school experience. I think it's a pretty great school, so I hope you're enjoying that.

I would also like to thank you for your presentation, highlighting as it does the essential points that we really don't have a lot of information on, specifically section 46 and the issue of legal representation, a legal support centre. We really don't know what kind of shape that's going to take, and I think it would be helpful if the Attorney General could clarify at least that point because it's such a large part—the third pillar, with the commission and tribunal—that I think needs to be clarified in order for any meaningful input to be made.

Lastly, I appreciate your comments about how the disabilities community is often the one lost in the shuffle. I think it's important that we give priority to all human rights complaints, including the disabilities community. I think we need to take that into consideration as we go forward. Thank you very much for your presentation.

The Chair: Thank you very much.

1400

NEW VISION ADVOCATES

The Chair: The next group is New Vision Advocates. Representing them is John Paul Regan. Good afternoon. You have 30 minutes. You may begin.

Mr. John Paul Regan: Good afternoon, ladies and gentlemen. My name is John Paul Regan. I am the co-chair of the New Vision Advocates.

Thank you for this opportunity to have input into the proposed changes to the Human Rights Code. I'm here

today representing people with intellectual disabilities who are members of the New Vision Advocates, supported by Community Living London. New Vision is a group of over 35 people who have an intellectual disability who have learned about their rights and to speak up for themselves. We have advocated for ourselves with MPPs, community groups and the city of London to ensure that our voice is heard about our opinions on issues that are important to our group members.

We appreciate the committee is listening to our message today. We feel it is important to speak out on proposed changes to Bill 107, the proposed Ontario Human Rights Code Amendment Act.

This act sets back the rights of people with an intellectual disability to have a statutory guarantee that discrimination complaints will be investigated through a publicly funded investigation and to have legal representation at Ontario Human Rights Tribunal hearings. Many organizations and people with disabilities fought over 20 years ago to have this guarantee.

Our concerns are not just for people with an intellectual disability but for all people who would be vulnerable under the proposed new direct access model. We congratulate the government for wanting to reform the human rights system to ensure better access to justice, speedier resolutions of claims and more support for complainants. After reading the proposed changes set forth in Bill 107, it is clear that the above goals will not be met.

We do not understand how taking away the Ontario Human Rights Commission's power to investigate, mediate and, if necessary, prosecute human rights violations will give people better access to justice. How is forcing vulnerable people to investigate their own claims and hire their own lawyers providing more support?

Many people with intellectual disabilities are on fixed incomes. Many people will not have the financial ability to hire their own lawyers, nor do they have the resources to investigate their own claims. People with disabilities have been advocating within their communities and with government to create a barrier-free Ontario. The changes to the Human Rights Code as outlined in Bill 107 will, in fact, create more barriers for people to overcome in order to ensure their rights are respected.

Although I have never had to make a complaint to the Human Rights Commission, it would be comforting to know that I would be supported through the complaint process. Bill 107, as it stands, will make it very difficult for most people with disabilities to fight against discrimination since they would have to use the new direct access system for the Ontario Human Rights Tribunal. How do we navigate a system we truly know little about without the support and guidance that the Ontario Human Rights Commission currently offers with lawyers and funded investigations? People on fixed incomes can't afford to hire their own lawyer or have the resources to investigate a human rights complaint. People don't have the investigative powers that the present OHRC has. People don't have the resources or supports to battle with

large institutions, which have many more resources. People would be overwhelmed fighting on their own.

We need support to launch a human rights complaint if our rights have been violated. I am a member of the accessibility advisory committee with the city of London. This committee is maintained to find ways to implement the Accessibility for Ontarians with Disabilities Act at the local level. The goal of the AODA is to have a barrier-free Ontario in 20 years. It was recommended in developing the AODA that it have publicly funded complaints investigation powers. The government said it was not needed in the AODA as the Ontario Human Rights Commission would handle any complaints. These new changes under Bill 107 would weaken the AODA and set back the rights that people with disabilities won 20 years ago under the Ontario Human Rights Code.

For New Vision Advocates members, it is important for us to speak out about our rights. Our goal is to promote our right to being full citizens in our communities and to educate the public about inclusion for all people with a disability. We have completed presentations to many community groups to promote these ideas. However, our message will not always be heard. When people or organizations do not listen and discriminate against us and other vulnerable persons, we need the support of a publicly funded Ontario Human Rights Commission to investigate our complaints and provide legal representation. We cannot do this on our own, for the reasons we have already mentioned. New Vision Advocates agrees with the Accessibility for Ontarians with Disabilities Act Alliance position on Bill 107. We strongly recommend that their proposed amendments to Bill 107 be followed to guarantee the rights of people with disabilities. I would like to thank you again for listening to me this afternoon.

1410

The Chair: Thank you very much. We have about six minutes each. We'll begin with the government side.

Ms. Matthews: First, John Paul, let me say thank you so much. You do such an admirable job of advocacy in this community, and your work has really made a difference. I just want to thank you for all you do, and especially for coming here today.

I want you to know that your concerns have been heard. You may know that I had several people approach me on some of the issues that you've raised today. I asked the Attorney General in the Legislature if he would clarify the intent of the government to ensure that people do have the legal representation they need, and he has given that assurance. This committee, in its wisdom, will craft the amendments that will make sure that the issues you have raised are in fact entrenched. So the bill will be better because of the work that you and others have done, and I want to thank you for that.

I think you will agree, and maybe you'd let me know if you don't, that the current system doesn't work. The current system is cumbersome, and very, very few people who have complaints ever get to the tribunal stage. So I think we all agree that work needs to be done to make this a Human Rights Code that we're all proud of and that works for us as Ontarians.

I also want to assure you that that investigative function that you talked about is not being eliminated; it's being streamlined so that the investigations will be done once and there won't be a duplication the way there is now, so that we can get to a resolution of the complaints. The people will have justice in a more timely fashion, and I think we all agree that that's one of the major objectives of this legislation.

So thank you again. Your work is very much appreciated and very much respected.

Mr. Berardinetti: I also wanted to thank you today for coming out. We do appreciate your input.

As you've probably heard, we're going to be going to other cities, to Ottawa and Thunder Bay. One of the things we're going to do afterwards when we come back to Toronto is go through this legislation clause by clause, and there are members of the government not just here, and members of the opposition here as well, and also some of the lawyers who work for the government who are listening to the comments. When we go through this clause by clause, section by section, hopefully some of your points and those made by others will be brought forward and looked at, and possibly some amendments could be made. So we'll wait and see what happens when that comes forward, but thank you for your presentation.

The Chair: Mrs. Elliott.

Mrs. Elliott: Thank you very much, Mr. Regan, both for your presentation as well as for the advocacy work that you do. It is really important and will continue to be so as we work forward with this legislation, because I think it's by no means certain that what we have right now is what we'll end up with. I think we will certainly be advocating for some significant amendments, and your presentation today has certainly helped us to clarify some of those issues. I thank you very much for that.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you very much, Mr. Regan. I appreciate your input into this process, but I've just got to give a little bit of a contra perspective here. We're not one happy family. You see, the government has one, two, three, four, five members on this committee; the opposition has a total of three members on this committee. So it's not a matter of sitting down politely and saying, "Well, what do you guys think?" "Oh, no, please. What do you think?" "Oh, no, Ms. Elliott, what do you think?" I'm speaking from the government's perspective. No. The government will get its marching orders. That's why there are government staff members here. There's a few hundred thousand dollars worth of political staffers here in the audience. They're keeping tabs on the government members to make sure that they follow the government line. Mr. Zimmer is doing an excellent job. I want political staff to report back that Kormos praises Zimmer—there's one of the staff members there—for doing the best he could under the circumstances, because the new approach, Mr. Regan, is the kinder, gentler approach.

You see, first the government was really vilifying people who opposed Bill 107, as if somehow we were opposed to expediting human rights cases. That was

hogwash. I say that this is a very serious issue. I haven't heard Mr. Bryant explain who is going to get lawyers, whether there's going to be a means test, and how many hours, if they're a legal aid certificate lawyer, they're going to be allowed. Is there going to be a roster of qualified human rights lawyers? Because there are some out there—not a whole lot, but there are some very qualified lawyers. Is it going to be done through clinics? And I don't understand how the investigation is going to take place if you have to hire your own lawyer and prepare your own case. Nuts.

The problem is, people who discriminate aren't about to sit down and sign a confession in front of you, right? If somebody discriminates against somebody else, contrary to the Human Rights Code, they're not inclined to write a letter saying, "I have discriminated against Person A, B or C in the following manner." What they do is cover their butts, right? They defend themselves. They try to do everything they can to avoid having a finding made against them.

Just like you, I've got some real problems with the bill, and know the government will control the amendment process because they've got the majority. That's the way it's been for the 18 years I've been at Queen's Park, and I suspect, unless we have a minority government next time around—which would be an interesting proposition, a fascinating prospect—it will be that way for the next 18 years. So I appreciate your input, your perseverance, and those of others like you, all people who have participated in the hearings, but know there's going to be some bitter debate—trust me—come September when we do clause-by-clause. It's not going to be touchy-feely; far from it. Thank you, Mr. Regan.

The Chair: Thank you very much for presenting this afternoon.

PAT CASE

The Chair: Next is Pat Case.

Good afternoon, sir. You may begin.

Mr. Pat Case: Thanks very much for setting up these hearings. I wanted to say first of all that I sent a set of written submissions in a bit late on Friday afternoon, so you don't have them in front of you. What I've been told is that you will eventually get them. There are 13 pages of submissions that I sent in.

Let me just say that when you read the submissions, what you'll recognize is that I've spent the 13 pages talking about changes that I think need to be made to the bill—together, of course, with suggestions that have been made by a wide number of other people—in order to bring about the best system possible. I haven't spent a whole lot of time in the submissions speaking in laudatory terms about the bill, but that shouldn't be taken to mean that I don't support the bill. I do, in fact, support the bill.

I'll speak now to some of the issues that are in my submissions, but I'm going to spend most of my time speaking about my own experience with human rights

law in Ontario and why I think the current system needs change, and needs change rapidly.

My experience with the code goes back to about 1980, when I became a school trustee at the Toronto Board of Education and was involved at that time with race relations at the board of education. It wasn't until about 1988, however, that I actually began my own sort of practice, if you like, with human rights law. I finished law school and went back to the Toronto Board of Education as an employee in the equity office at the board, where we handled case-by-case work. My work right now is as the director of the human rights and equity office at the University of Guelph, where, of course, again I handle case-by-case human rights matters.

1420

As you can see from the little send-up thing, I'm the past chair of the Canadian Race Relations Foundation—more human rights work. I've been the co-chair of what's known as the equality rights panel of the court challenges program of Canada, which is not bound up as much with provincial human rights work but certainly with section 15 of the charter, in addition to which I should mention that over the last number of years I have taught human rights law at the University of Guelph in two courses and I also teach a course called Law and Poverty at Osgoode Hall Law School. So it's with that accumulated experience that I come to you about the code and about the current establishment.

I've been a net user, if you like, of human rights services in the province for quite some time, and that has to do with my phoning up the commission for advice on particular matters from time to time—I should say fairly frequently—speaking to people in the policy division and submitting policy drafts. I've always thought that when we came out with a policy draft at the university or the board of education, a good place to go would be the commission, to submit the draft to people for a smell test, right? You know, "What's going on here? Is this any good? What are the kinds of things that you would advise us on?" and so on. The commission has worked well with organizations that I have worked with in that respect.

The practical matter, though, comes down to this for me: The commission, as currently constructed, attempts to serve too many masters and mistresses all at the same time—just too many.

Let me give you a really practical example that came up fairly recently. We are in the throes of reviewing our human rights policy at the University of Guelph. There's a built-in three-year review. We're in the throes of reviewing the policy right now. What we wanted to do was to partner with the commission in this review, have people from the commission work with us on the review. This would be great for the university. It would be great for the commission as well, because I note that the commission doesn't actually have any partners in sectors across the province. It doesn't have any partners in the university sector, partners in the public education sector, partners in industry. This would be great, we thought, both for the commission and for ourselves, to develop

this partnership so that we could go out and say, "Hey, we partnered with the commission in developing this policy," and the commission could say, "Hey, we've got some best-practices stuff here from the University of Guelph. It might go up on the website."

Sorry to tell you, folks: It can't be done. And you know why? A very simple reason, and that is that the commission must take every case that comes in the door, every complainant. So picture this—and it makes total sense, right? If the commission had worked with the University of Guelph in the revision of its policy and then a complainant went from the University of Guelph to the commission, fill in the blanks. The complainant is going to say, "Hang on a second here. You're in bed with the university. You've already said that their policy is okay. How can I get a fair shake from you people?" Right? So the position that the commission is in at this time is one in which such partnerships would put it in a conflict of interest with its own mandate, which is to take cases on an individual basis, and that, to me, is just ridiculous.

The commission must be working in partnership with all sectors of society in Ontario in order to bring about change. It must be working with organizations to develop best practices in order to show those off and to show to people in various other parts of the province, "This is not rocket science. You don't have to fear this stuff. You can learn from other people." That, to me, needs to be one of the principal roles of the commission in human rights in this province. As the people's tribune in the province for human rights, that would be its role. Its role would be taking the high road—"What are the best principles? How do we put forward those principles?"—and not taking sides necessarily in battle as between an employer and an individual.

Having said that, however, I do think that as far as casework is concerned, the commission must retain some residual ability to pursue cases; that is, to pursue the enforcement of the principles of human rights within the province. How can that be done? It can be done by the commission, as it's laid out in the bill, having the ability to bring cases before the tribunal, a power that I view as being particularly powerful if it's coupled with the power that exists in the bill right now of review and with the ability to come up with section 14 special programs, suggestions, workarounds for organizations.

Look at it this way: The commission comes to the University of Guelph to do a review of our employment practices and they find that these practices are wanting. They say, "Okay, look, here are some of the things you can do by way of special programs under section 14 to fix that." If the University of Guelph doesn't fix it, the commission then should be able to go to the tribunal and say, "Look, we went in there. Here's the report we generated based on our interviews with the people at the University at Guelph and based on our investigation of the employment systems in the university. Here are our suggestions as far as special programs are concerned. They didn't follow them. The outcomes are the same. We want an order from you to enforce those recommend-

ations.” And I think that is just. That would be something that would be in order to do.

Here’s a little wrinkle, however. My work with systemic discrimination over the years has taught me a number of things. There are some cases that you can look at right off the bat and say, “Okay, in this case, you can see how it might affect whole groups of people and be a public interest matter.” There are some others where that’s simply not as easy. You’ve got to do some grunt work to be able to see what the link is. I’ve had experiences of that both at the board of education and also at the University of Guelph, where it was really necessary for the office to take a number of cases in the area, develop our expertise with what was going on there and then be able to put your finger on it.

Here’s an example: It may be the case that an individual complains about not being promoted to a particular position in an organization. You take a look at the interview materials and it’s impossible to see any discrimination on the face of it. A second individual comes forward, and now you’re beginning to develop an aggregate of cases, people saying the same thing. A third person comes forward, and now what I’m going to do is, I will ask for the people in control of the hiring to give me some statistics to show what has happened in the last X number of cases of people who have been promoted. It’s possible—this in fact occurred—that over the course of a 30-month period and the number of people who were promoted to a particular position, we were able to identify a pattern of behaviour within the institution. No one case would have thrown that up; a number of cases did.

I do think it’s important for the commission to retain its ability to conduct intake in specific areas so that it can develop that expertise and pursue public interest work. One of the problems that arises for you, however, is, how do you structure that and confine it so that all of a sudden that doesn’t become the ability to take on another 20,000-odd cases? I think that can be done by being very careful about the drafting. What we’re talking about here is work that might involve strategic cases in defined areas, coupled with a requirement for the commission to report annually to the Legislature—whether it’s an agency of the Legislature or not—however you might decide that should happen. At least legislators will be able to say, “Wait a second. This could be, as far as the commission was concerned, a bona fide area of inquiry,” or, “What the commission is simply doing is spreading itself too thin again,” and some advice to them about pulling themselves back. So I think that there are checks and balances that one might be able to build in to make sure that sort of thing doesn’t happen.

1430

An absolutely critical part of this change must be the development of the legal support centre with arms across the province. What I think would assist the legal support centre and its growth from a doctrinal point of view, as far as human rights law and practice is concerned, is if it were linked to one or other of the law schools in the

province so that students from one or a couple or a few of the law schools were attached to the clinic. Where there are clinics in the province—Western, Queen’s, Ottawa; U of T has two clinics; Osgoode has two clinics—it’s clear that the presence of second-year students, with their level of excitement, their level of investigation, their level of wanting to get at the task, has brought about significant law reform and significant amounts of work on behalf of clients in particular neighbourhoods.

I think that importing that model into the legal support centre would be a very positive thing, but I think too that what you should look at is how to bring on board those law clinics where there are students currently in various parts of the province. One of the effects of that would be to immediately grant access to people right across the province. Some of these clinics already do some human rights work; Ottawa takes human rights cases, for example, and I think Windsor takes some human rights cases as well. What it would do in those other clinics is immediately develop resources that would be available for the communities in those large centres of the province.

This is, I guess, a bit of a slight on colleagues in the legal profession, but a number of years ago the Law Society of Upper Canada did a survey to discover what lawyers knew about the Ontario Human Rights Code and how they saw it applying to their firms. You’re smiling; you may remember. It was abysmal. It was just awful. The lawyers knew so little about the code. They didn’t know or believe even that the code applied to their own practices as far as sexual harassment was concerned, disability discrimination and so on. One of the clear effects, it seems to me, of building in a student aspect to this project would be to send people out there with a greater appreciation for how human rights law and practice affect themselves, their clients and the community at large.

This isn’t going to be a make-work project for lawyers. I’ve heard people make that comment before. When this bill passes the Legislature, there will be no more people out there who can all of a sudden afford lawyers to do human rights work. I don’t believe for one moment that this change is going to be putting money in lawyers’ pockets or generating or spawning work for lawyers, but I do think that the change can bring about some positive effect with respect to the way that lawyers work in the province.

Just on a couple of final matters: One of them has to do with the independence of the commission, something that I think is critically important. It may be the case that it’s not possible to have the commission reporting directly to the Legislature—I don’t know—but certainly measures can be taken, amendments can be made to the bill that would result in the commission working at being perceived at and indeed working at a much greater arm’s length from the government, so that it can be free to act as the people’s tribune, so it can be free to act in a way that will be critical of government with respect to human rights violations or potential human rights violations.

That is a trust that you as legislators must have in the commission.

Finally, with respect to resources, I've heard some disturbing rumours, if you like, lately that the tribunal is under some constraints as far as resources are concerned. I think one of the things that you need to do is make sure that that simply doesn't happen under the new regime. This will not work unless the resources are there for the commission and the tribunal to work. The tribunal shouldn't be scrambling for space and it shouldn't be scrambling with backlogs. So whatever has to be done to make sure that doesn't occur needs to take place.

That's it for now; thanks. But when you get my submission you'll see that there are a number of other issues canvassed in much more detail with respect to specific amendments.

The Chair: Thank you very much. We have just over a minute, so if everyone can just quickly make their comments, that would be good.

Mrs. Elliott: Thank you very much for your presentation. You've raised some different issues, in a sense, from some of the other things that we've heard this afternoon, Mr. Case. I'm particularly interested in your view of the role of the commission in the future and the necessity for the commission to be able to advocate and to promote public education and so on and work on best practices, yet at the same time still have the ability to investigate selected systemic issues. How would you see that operating in practice? Would it be a question of building a Chinese wall, a firewall kind of thing, between the two sections so that they don't interact to deal with that whole issue of conflict of interest?

Mr. Case: Yes, that's right—

The Chair: A quick response, please, Mr. Case.

Mr. Case: Sure. If you take away the major responsibility for intake—they must now take in anything that comes. If you take away that major responsibility, it seems to me you get rid of a large part of the perceived and the actual conflict of interest.

Mrs. Elliott: Thank you.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. You make reference to lawyers being unfamiliar with the Human Rights Code. Hell, most of the lawyers I know don't think the Employment Standards Act applies to their practice, in terms of the wages they pay and how many hours they expect their staff to work.

Mr. Case: That may well be true too.

Mr. Kormos: Specifically—because you raise issues around the issue of conflict of interest; fair enough—what about, though, the fact that our Environmental Commissioner is selected by motion of the Legislative Assembly; the Ombudsman is selected by motion of the Legislative Assembly? In other words, they are independent of the government; they are accountable to the Legislature. Why shouldn't the Human Rights Commissioner, especially in terms of the advocacy role that you advocate and that I think most of us agree with, be a tripartite—in the current context—appointment, rather

than serving at the pleasure of the government? Wouldn't that create a genuine arm's-length role?

Mr. Case: In principle, I have no problem with that, but there are others who work within the government system in Ontario—the Ombudsman's office, for example; your Environmental Commissioner—whom you don't expect that of, necessarily. So I'm not sure why in this case.

Mr. Kormos: But they're independent; they're selected by the assembly.

The Chair: Thank you, Mr. Kormos. The government side.

Mr. Zimmer: Thank you. Your last point about ensuring that the commission has resources to carry on its function is a good one, and I can assure you that this government is mindful of that and that's a part of the process that we're undertaking. The government of the day in 1993-94 cut out, as a cost-saving exercise, \$1.5 million from the commission's budget, and in the following year, 1995-96, cut out another \$1 million. That's the kind of thing that we want to move away from. So your last point is particularly well taken.

Mr. Case: You can have the best system on paper that you like, and then strangle it from a resource point of view.

The Chair: Thank you very much, Mr. Case.

1440

PSYCHIATRIC PATIENT ADVOCATE OFFICE

The Chair: Next we have the Psychiatric Patient Advocate Office. Good afternoon. You may begin, but first, if you could introduce yourselves for the record.

Mr. David Simpson: I'm David Simpson, the acting director of the Psychiatric Patient Advocate Office.

Ms. Lisa Romano: And I'm Lisa Romano, legal counsel at the Psychiatric Patient Advocate Office.

Mr. Simpson: Good afternoon, Chair and members of the committee. I would like to thank you for the opportunity to present to the committee today and to be part of the discussion on the reform of the human rights system in Ontario. I would also like to recognize the courage of those who have appeared before you today as individuals to share their stories, their passion for human rights, and for wanting to make the world a better place than they found it.

The Psychiatric Patient Advocate Office is an arm's-length office of the Ministry of Health and Long-Term Care. The patient advocate office provides individual advocacy, rights protection and rights advice to clients in the current and former provincial psychiatric hospitals through its community-based rights advice service, and rights advice in nearly all of the psychiatric units of schedule 1 hospitals across Ontario. For more than two decades, our office has advocated strenuously on behalf of consumers of mental health services in an effort to address significant rights issues and make systemic change.

Consumers of mental health services continue to face formidable barriers to inclusion in communities throughout Ontario and have limited opportunities for employment, education, housing, and financial and social support. Myths and misconceptions about mental illness are plentiful and dangerous. Stigma, discrimination and the failure to adequately accommodate disabilities contribute strongly to the disempowerment and marginalization of individuals with mental illness. Discrimination is often subtle and insidious. For our clients, the consequences can be devastating, detrimentally affecting their health and well-being. Discrimination is pervasive because we are not yet an inclusive, accepting and understanding community.

Our clients, in striving toward recovery and wellness, want nothing more than to live their lives free of discrimination, to exercise the same legal rights as others and to be welcome and included in their chosen communities. Some of our clients, because of their illness, cannot pursue a formal complaint through this complex and bureaucratic system unless they have appropriate supports. At times, our role is to give a voice to those who are disenfranchised merely due to their membership in a vulnerable group; namely, people with a disability. These are the very people who require strong and effective rights protection mechanisms. Sadly, some of the proposed changes to the human rights system in Bill 107 will not advance the rights of our clients or Ontarians in general.

Our office believes that the government could, with the investment of additional resources, enhance, modernize and strengthen the current commission so that it is better able to fulfill its mandate and function. For example, with extra money, the commission could establish a more efficient process to triage complaints, establish a process for dealing with urgent or significant human rights issues, develop a comprehensive case management system, strengthen its investigative function, develop a process for the identification and resolution of systemic complaints, and provide public education to Ontarians. Timelines for the resolution of complaints should also be defined in law. With further investment, Ontario could have a progressive and enriched human rights complaint process without the need to simply make change for the sake of making change, as proposed by Bill 107. The commission will never realize its full potential unless it is adequately resourced to take on the challenges and opportunities it is provided by the people of Ontario who approach it for assistance and support in pursuing their legal rights.

It is our opinion that the current system is effective, albeit under-resourced. If all cases proceed directly to the tribunal, as envisioned by Bill 107, it will simply shift the burden of the current system. The tribunal should be the final step in the process where the parties and the commission have been unable to resolve a human rights complaint to the satisfaction of the parties following voluntary mediation, investigation and conciliation. The tribunal should be available to deal only with the most

serious human rights violations and abridgement of rights. This two-tier approach has been effective in charting the course of human rights in Ontario.

By repealing and replacing part III of the code respecting the commission and abolishing investigations in favour of a direct access model, human rights advocacy is being privatized. Victims of discrimination will be forced to investigate and prove their claims. Consumers of mental health services will be extremely disadvantaged by the proposed changes. Many of our clients have intersecting or cross-sectional claims, meaning that persons are members of more than one historically disadvantaged group. For instance, individuals with a dual diagnosis—a developmental disability and a mental illness—often experience discrimination with respect to access to supports and services that meet their unique needs; or consider the obstacles facing a female with mental illness who also happens to be a member of a religious minority. These individuals are twice or even three times as marginalized, making a human rights complaint exponentially overwhelming.

In those rare cases where a victim is able to overcome these obstacles, the remedy he or she will be seeking will probably be an individual, not a systemic, remedy. Presently, one of the primary functions of the commission is to represent the public interest. With the proposed changes in Bill 107, the new gatekeeper will become the tribunal, as opposed to the commission.

While our office applauds the Ministry of the Attorney General for attempting to reform the human rights system, and we welcome improvements, there are many problems with Bill 107 that prevent it from achieving its goals. Our submission and recommendations articulate our concerns and offer possible solutions to the government of Ontario.

Our submission is divided into two sections, the first section being positive changes to the current human rights system, and the second section called “Problems with the proposed human rights system.”

Lisa will take us through the first section.

Ms. Romano: So just to clarify, the first section is based on the premise that the commission remains intact, as it is. We are going to outline why we feel that’s important and the changes that can be made to the current system to enhance its efficiency.

Currently, every person who files a complaint with the commission has the right to an investigation of his or her complaint. The commission has a wide array of investigatory powers, ranging from the inspection of documents, entering buildings, questioning individuals to obtaining a search warrant if necessary to obtain evidence. Based on the outcome of its investigation, the commission may or may not refer the case to the tribunal for a hearing. Although the commission does not represent the complainant, the commission assists the complainant with the litigation process by preparing witnesses, pleadings and motions, as well as calling evidence. At the hearing, counsel for the commission litigates the case in the public interest and acts as a public

prosecutor by attempting to prove that the complainant suffered discrimination. The complainant may retain his or her own lawyer, if he or she chooses, but it is not strictly necessary.

Bill 107, however, eliminates the complainant's right to an investigation—

The Chair: Just to interrupt, can you please slow down the pace for the translation.

Ms. Romano: Sorry; my mistake. I tend to speak too quickly.

The Chair: Go ahead.

1450

Ms. Romano: Bill 107, however, eliminates the complainant's right to an investigation and significantly reduces the power of the commission to advance the public interest before the tribunal.

As noted earlier this morning by a speaker—and I regret that I didn't catch the person's name—the current human rights system is analogous to victims of crime who approach the police for assistance. The police investigate the case for public interest reasons as well as the personal interest of the alleged victim. Their methods of investigation include collecting evidence, reviewing documents, talking to suspects and witnesses and, if necessary, obtaining search warrants. If the evidence is strong and indicates a reasonable belief that a suspect committed an offence, the police will lay charges. Crown attorneys then represent the public interest via the prosecution of the crime to deter others, punish the perpetrators and gain redress for the victim.

If we compare this criminal process to human rights enforcement, the commission investigator is analogous to the police since it gathers evidence, reviews documentation, interviews witnesses and respondents, and may even obtain a search warrant. On the basis of the information acquired during the investigation, the investigator will try to conciliate the dispute, and if this is unsuccessful, the case will be referred to the tribunal.

We think it's safe to say at the PPAO that it's inconceivable that the police would ever stop investigating complaints made by victims of crime if the government wants to eliminate investigation for victims of discrimination.

The dismantling of the commission will have a profound detrimental effect on human rights advocacy. By forcing complainants to conduct their own investigations and present their own cases to the tribunal, some individuals will be faced with an insurmountable barrier. Requiring victims to investigate their claims forces some individuals to return to a discriminatory environment and to be unnecessarily re-victimized. Many complainants may not have any friends or family to support them emotionally through this journey, causing them undue stress and potentially impacting their personal health and well-being.

The PPAO is also concerned that some of our clients may not be able to conduct their own investigation because their mental health history may be used against them to undermine their credibility.

Bill 107 disregards the tremendous inequities that are found in the very law that is supposed to protect rights and deter discrimination. Currently, the decision of whether a complaint will be referred to the tribunal is made behind closed doors, and complainants are given very few reasons for the decision by the commission. The PPAO does recommend that the parties be given comprehensive reasons for the decision not to refer a decision to the tribunal—or if it is referred to the tribunal, they should be given the information—and access to the information upon which the decision was based.

It is also acknowledged that some complainants would prefer to proceed directly to the tribunal without having an investigation. So in the hope of reducing delays, the PPAO does support giving choice to complainants as to whether their complaint is investigated immediately by the commission or if it goes straight to the tribunal.

The PPAO also believes that potential complainants should receive more supports throughout the human rights enforcement process. There should be qualified intake staff to support complainants, answering questions and providing information about both the commission and the tribunal. Front-line workers should also help complainants frame allegations and complete the necessary paperwork to initiate complaints. The work of front-line staff is important since potential complainants act on this information, influencing whether a complaint is pursued or whether they would seek other avenues for assistance. Obviously, to meet these requirements and do the job to the best of their ability, front-line staff should meet prescribed qualifications and be carefully trained. It is also crucial that a person at this juncture have an opportunity to seek a legal opinion as to the merits of their case. After receiving advice, some individuals may choose not to go forward to the Human Rights Commission.

Many consumers of mental health services are in receipt of social assistance from the government due to their mental disability. They cannot afford to hire private legal counsel, and Legal Aid Ontario provides limited legal assistance if they are eligible. A person complaining of discrimination should not be required to pay for their own lawyer to advance their case through the human rights process. Instead, complainants should have access to publicly funded legal counsel, if they choose, throughout the process to ensure that their human rights are properly enforced.

I'm going to skip to page 6 of our written submissions and discuss the Disability Rights Secretariat. Bill 107 establishes a Disability Rights Secretariat whose functions are research, education and other tasks as dictated by the chief commissioner with respect to discrimination on the basis of disability. The PPAO believes that this secretariat is a toothless tiger because it cannot initiate its own reviews or investigate complaints. To be effective, its mandate must include monitoring, investigation, compliance and enforcement functions. The secretariat must also be able to intervene in cases at both the commission and tribunal levels with a view to promoting systemic,

lasting change in the area of disability rights. This secretariat should also work closely with those who have responsibility for implementing the Ontarians with Disabilities Act to coordinate strategies that protect and promote the rights and entitlements of individuals with mental illness. Also, Bill 107 only allocates six members to the secretariat. We feel that number is insufficient, considering that more than half the claims being launched before the commission involve disability as a ground of discrimination.

With respect to commission and tribunal members, Bill 107 discusses their appointment and term of office but it doesn't address the qualifications of members. This is a major oversight given the important role played by members. The PPAO believes that persons should be appointed due to their relevant experience and demonstrated commitment to human rights, as opposed to political affiliations. Members should be recruited and appointed via open and transparent processes that reflect the gender balance and diversity of Ontario. The ensuing body of competent and skilled members will enhance the efficiency, quality and expertise of the tribunal and the commission. Citizens of Ontario would have renewed confidence in both of these human rights bodies.

I'm just going to discuss training and education very briefly. Members of both the commission and the tribunal will encounter many different people from many, many different walks of life in their work, and all staff members of the commission and the tribunal should receive initial and ongoing training respecting mental health, mental illness and addiction. A culture of understanding and acceptance of mental illness is essential if we want to be an inclusive and caring community.

We've heard this from a few speakers today, but the PPAO also believes that the commission should report to the Legislative Assembly. That would guarantee autonomy and political independence. I'm just going to repeat a quotation from Barbara Hall, the current chief commissioner. She has stated publicly that, "International guidelines clearly indicate the preference requiring the commission to report to the Legislature to avoid the perception of financial and administrative control by government over the activities of a human rights commission." It is troubling that the commission is not independent since in a large proportion or a large number of the complaints that go before the commission and the tribunal the respondent is the government, requiring the commission to sometimes make adverse findings against, in effect, its superior.

I'm going to discuss third-party applications briefly. Neither the code nor Bill 107 allows third parties to lodge a complaint on behalf of an individual. This right is reserved only for individuals or groups of individuals who have a common question of law or fact or the same alleged perpetrator. The PPAO recommends that Bill 107 be amended to include provisions for the commission and tribunal to accept complaints from third parties. Over the past two decades we—and I mean the PPAO—have witnessed many rights infringements that go unchecked simply because the individual does not have the capacity

to make a complaint in their own right. For example, individuals with dementia, acquired brain injury, a developmental disability, an addiction or serious mental illness may experience a human rights abuse but not be able, due to their mental illness or disability, to pursue a complaint. In that regard, we feel that stakeholders should be consulted and standards be developed to define circumstances where complaints by third parties could be accepted.

I'm also just going to briefly mention advisory groups, and that's on page 10 of our written submission. The PPAO wholeheartedly supports the creation and involvement of advisory groups, as they can offer invaluable input to the commission. Specifically, we feel there should be the creation of an advisory group committed to mental disability comprised of a majority of consumer-survivors, as they provide important expertise about the mental health and addictions system. We also feel that there should be provision in the new law about remuneration for advisory group members, to cover their travel expenses and time.

We are concerned because Bill 107 simply states that the chief commissioner "may" establish advisory groups. We feel that the language of the bill should say "shall" establish advisory groups.

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Also on page 10 of our written submission, we talk about limitation periods. Both the code and Bill 107 stipulate that a person can only bring a complaint within six months of the alleged discriminatory behaviour. There are some exceptions to that, but that's the basic rule. We at the PPAO feel that the current and proposed legislation contravene the general limitation period that's set out for most civil actions in the Limitations Act. Although the code and Bill 107 permit an extension of time in limited circumstances, it is discretionary and not guaranteed.

A short limitation period is particularly onerous for our clients or consumers of mental health services. Due to the cyclical nature of many mental illnesses, some clients may not be able to assert their rights for an extended period of time. This short timeframe precludes many individuals from exercising their rights. Due to the pervasive stigmatization and lack of respect for the rights of consumers, some victims may not even realize they've suffered discrimination until a later point. Others may have realized that their human rights were violated but were too scared or vulnerable to take action at that time.

On page 11 we discuss enforcement. Neither the code nor Bill 107 provides mechanisms for the commission to enforce its authority. This is maybe one contributing factor to the delay in the current investigation process. We feel there must be mechanisms for enforcement to ensure full compliance and compel parties to take action. The PPAO supports increased powers to the commission to make binding compliance orders and impose penalties on parties who fail to co-operate with the commission. The commission needs the necessary tools to do its job properly and to emphasize the significance of the com-

mission's role, and this is whether it's under the current system or under Bill 107.

On page 12 of our written submission we discuss a review of the legislation. Bill 107 mandates a single review five years after the effective date of the implementation of the changes resulting from Bill 107, and then there must be a report prepared. The PPAO agrees that it is crucial to have a review of the new system, but we feel that five years is too long to wait for a review. So we propose that an initial review be conducted two years after Bill 107 comes into force and that there be subsequent reviews every three years thereafter. We also feel that it's important that there be consultations with stakeholders during this process. We also think that the person responsible for the review should not be a minister but an executive council appointment. These reports should be prepared in a timely manner and they should be presented to the Legislative Assembly and made available to the public.

Finally, I'm just going to speak about statutory timelines, which is on page 13 of our written submission. We feel that both the code and Bill 107 are lacking statutory timelines with regard to any steps in the human rights process. To be effective, there should be timely resolutions, obviously. This we think could be accomplished more easily if there were timelines in the legislation. The government should work with stakeholders to develop appropriate timelines to prevent a backlog of cases.

I'm going to let Mr. Simpson continue.

Mr. Simpson: I'd just like to take a couple of minutes here to talk about some of the issues with the proposed human rights system as envisioned in Bill 107.

On page 13 of our submission we talk about the intervenor status of the commission. Currently, the commission has a mandate to prosecute every case before the tribunal, in addition to raising systemic issues. Section 39 of Bill 107 delineates the parties to an application to the tribunal. It does not automatically grant intervenor status to the commission. Since the commission is no longer able to act as a public prosecutor under Bill 107, the PPAO thinks it is imperative that it at least be able to intervene in cases that may have wide-ranging effects. It is illogical that the commission, despite its proven expertise in human rights and discrimination law, is not afforded any special status with respect to interventions. If the commission must argue for intervenor status in every case it wishes to pursue, it will delay hearings and prolong legal arguments by the respondent, who would not support intervention for political or self-interested reasons.

In order for the commission to be aware of noteworthy cases where it might choose to intervene, the tribunal must be required by law to notify the commission and provide sufficient information about all cases scheduled for a hearing.

Under rules of practice and procedure, on page 14: Currently, the tribunal is entitled to make rules governing the practice and procedure before it, pursuant to section 25.1 of the Statutory Powers Procedure Act. Section 34

of Bill 107 now specifically allows the tribunal to make rules of practice, including the ability to not hold a hearing, to limit the extent of parties to present evidence and make submissions, and to prescribe alternative procedures to traditional adjudicative practices.

It is the PPAO's position that the power of the tribunal to make these rules is overbroad. Rules of administrative boards are developed and approved by internal staff. As rules of practice are flexible and subject to change, there is the possibility that they are vulnerable to the agenda of the tribunal staff or that they may be inadvertently creating barriers to access for specific vulnerable populations.

There is also no requirement in Bill 107 for consultation with stakeholders. The development of rules governing its practice should be done in consultation with all stakeholders and implemented only after a required consultation period, similar to that enshrined in other provincial legislation. For example, other statutes require public notification and a consultation period of 60 days prior to any changes being made. We would support similar language being enshrined in this bill as a way to promote both transparency and accountability.

We also comment on mediation, on page 15. We recognize that voluntary mediation can be extremely efficient. We believe, though, that it's not appropriate where there is a power imbalance between the parties, because forced mediation can have the effect of re-victimizing the complainant or replicating the injustices that they have already experienced.

On page 16, the discretion to not hold a hearing: I'd like to draw your attention to this. Pursuant to section 41 of Bill 107, the tribunal has unfettered discretion to dismiss proceedings without a hearing in whole or in part if, among other things: the proceeding is frivolous, vexatious or commenced in bad faith; some aspect of the statutory requirement for bringing the proceeding has not been met; the facts alleged in a complainant's application are true but do not disclose a rights infringement; and the facts alleged in the commission's application are true but do not disclose a rights infringement.

Further, section 34(2)(a) permits the tribunal to make rules of practice whereby the tribunal is not required to hold a hearing. This has the potential of screening out certain types of complaints or complaints from certain types of complainants that would result in the denial of access to justice and the pursuit of the protection of human rights.

On page 17 we also comment on the awarding of costs. The current code does not permit cost orders to be made against a complainant if the tribunal dismisses the complaint. It does allow costs to be awarded if the complaint was trivial, frivolous, vexatious or made in bad faith or if undue hardship was caused to the respondent. Our concern here is that the awarding of costs could potentially act as a barrier, because some people may decide not to pursue a complaint for fear that if costs are awarded against them it would cause them financial hardship. So we are completely opposed to the awarding of costs in these circumstances.

On page 19, we also talk about user fees. The code does not provide for any user fees but section 45.2 of this bill permits the tribunal to charge fees for expenses incurred in connection with a human rights proceeding. Bill 107 does not permit a waiver of these fees based on financial hardship.

We strenuously object to the imposition of fees as they create yet another barrier to justice, contrary to the purpose of the code.

The Chair: If you can just conclude; you have about a minute left.

Mr. Simpson: Okay. User fees, in conjunction with other financial burdens in Bill 107—the cost of personal investigation, lack of clarity regarding legal assistance, the possibility of cost orders—will dissuade victims of discrimination from applying to the tribunal.

At a minimum, if this section is not struck from the legislation, the legislation must specifically state that recipients of government assistance will never be charged fees for any purpose.

In conclusion, we believe that the solution to the problems with our human rights regime is simple: Increase funding and resources to the commission to enable it to fulfill its statutory mandate. The commission's budget has remained static for a decade despite an increasing number of complaints. If we are to ensure that all Ontarians have "all human rights for all," then we must make investments in the very system that is to support them in realizing their rights and moving us forward to becoming a more understanding, tolerant and accepting society, free of discrimination and rights abuses.

Thank you very much.

The Chair: Thank you.

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CHATHAM-KENT SEXUAL ASSAULT CRISIS CENTRE

The Chair: Next we have the Chatham-Kent Sexual Assault Crisis Centre; Michelle Schryer.

Mr. Kormos: Chair, while these people are seating themselves, if I could request of legislative research—and I'll speak with Mr. Fenson and elaborate—if we could have a list of the critiques of the commission as it is now. We heard a number of them: delays, mishandling of cases, misinterpretation of them. If we could have a list of those things, because, before the end of this week, I will be moving a motion to invite Keith Norton and Barbara Hall to the committee to ask them to respond to those respective criticisms. I think that would be a valuable exercise. Thank you, Chair.

Sorry.

Ms. Michelle Schryer: That's okay.

The Chair: Good afternoon. You have 30 minutes, and you may begin.

Ms. Schryer: Good afternoon, and thank you for the opportunity to appear before the committee regarding this issue of utmost consequence.

The Chatham-Kent Sexual Assault Crisis Centre is a front-line, grassroots support and advocacy organization that directly serves women who have experienced the impact of violence, including sexual assault/harassment/abuse, and works towards the elimination of gendered violence.

CKSACC services are accessed by women whose vulnerability can leave them easy targets, not only of sexism but of racism, heterosexism, ableism, classism and many other societal prejudices based in phobia and misogyny. They include women with disabilities, lesbians, poor women, women who are members of racialized groups, immigrant women, First Nations women, single moms, young and old women, women whose first language is not English and women who are otherwise marginalized, for example, sex trade workers and women who have experienced institutionalization. I'm sure you can appreciate the added complexity of claims by women whose experience of discrimination and oppression is intersected in more than one of the above.

The CKSACC is a member in good standing of the Ontario Coalition of Rape Crisis Centres, OCRCC, the body that advocates on behalf of thousands of women across Ontario.

Our interest in appearing before the committee is deep-seated and grounded in very real and direct experience with the commission and women, as described above, who have sought to regain dignity and wholeness, and find remedy through the current Ontario human rights process. It also stems from insight and knowledge gained during the inquest into the workplace murder of Theresa Vince, whose sexual harassment by her direct supervisor ultimately ended, as you know, when he killed her. As part of a small coalition with our local labour council and women's shelter, the CKSACC was a party who had standing at the inquest.

In addition, the CKSACC was delegated by the Ontario Coalition of Rape Crisis Centres to attend, with counsel, the Ontario Court of Appeal when it successfully applied to intervene on behalf of a woman whose complaint of workplace sexual harassment was dismissed without an investigation by the Ontario Human Rights Commission. Lessons learned through the proceedings of both the inquest and the Court of Appeal have reinforced our determination to see the realization of legislative change that will improve and better protect the dignity, safety, human rights and lives of Ontario women and others. This legislative reform is way past due.

I support the submission of Theresa's family, whom you've already heard from. I know that you are now keenly aware of the horrifying and exceptionally poignant example of Theresa's murder and why legislative reform is not only needed but long overdue.

One thing I don't believe was mentioned this morning or earlier this afternoon is that Theresa Vince was not the first or even the last woman in Ontario to be murdered by her harasser after experiencing workplace sexual harassment. As you did hear earlier today, we learned at the inquest into Theresa's murder that the current human rights process is ineffective in addressing complaints of

workplace harassment and in providing meaningful, timely remedy for complainants.

Despite knowledge and awareness gained through the inquest about numerous legislative shortcomings—shortcomings that we now know can have an extremely negative, dangerous and potentially lethal ramification for workers who experience harassment on the job—there has been absolutely no legislative change to effectively address issues of discrimination and inequality, which are at the very root of harassment. We are encouraged to finally see some forward movement in this regard, and we're confident that an amended Bill 107 will help to advance equality and the protection of human rights in Ontario. We are immeasurably relieved that government has finally taken the issue of human rights reform seriously enough to do something about it. Clearly, ongoing government inaction and forgotten jury recommendations will not serve to protect or keep people alive.

As I have indicated, we have seen women tragically die in our region, while the current human rights system can do nothing to immediately stop the harassment or provide much-needed remedies. Theresa Vince, shot to death in her workplace by her boss, was one in a line of women. Lori Dupont was stabbed to death in her workplace less than nine months ago by a doctor who had sexually harassed her on the job. The current system, with the commission acting as gatekeeper, cannot stop the harassment in a timely way and it does not keep women safe in their jobs, or alive. We believe that Bill 107 can make a positive difference.

While the CKSACC assists women who have human rights claims, the women do not usually experience the commission as being supportive to them. To the contrary, many view the commission as adversarial. Few get through the process without external support, and most often the claim never makes it through the commission gates. This is the case even when we are able to engage outside help from private bar lawyers who assist women with their claims on a pro bono basis. Bill 107 would help to uphold the integrity of the commission as the protector of human rights in Ontario.

In our experience, most women feel completely disenfranchised by an outdated, paternalistic process that takes over control of their discrimination claim and their experience. Once the complaint is filed, that's it. The commission takes full charge and the women are left feeling powerless, as they did during the incidents that gave rise to their human rights complaint in the first place. Some give up out of a sense of futility, or they find the process too revictimizing. Claims are dismissed even though we fully believe them to be valid. Other women feel pressured into settlements that don't come anywhere near addressing the real harm done to them, but they feel threatened that if they don't accept the settlement, the commission will dismiss their complaint and there will be no validation of their experience at all.

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As has been stated throughout the day, all of this occurs behind closed doors, with decisions being made in

private by people these women never meet or see, without a hearing and without any ability for the complainant to appear or participate in the process. It seems no wonder, then, that of all complaints to the commission, only about 6% end up being referred to a hearing. That percentage is even lower regarding complaints of sexual harassment. The obvious consequence is the lack of enforcement of fundamental legislative protections against discrimination and harassment. Simply put, the current human rights laws in Ontario have no teeth. What message does that send to offenders?

It stands to reason that if existing enforcement mechanisms to protect human rights aren't working, the message to offenders is that they have a pretty good chance of offending with impunity. If the vast majority of human rights complaints are never adjudicated by a board of inquiry, what deterrent is there to offenders?

Currently, there appears to be no clear consequence to human rights violators, or to institutions or structures that support them by allowing a poisoned environment. Based on our experience, it is our firm position that the current human rights complaints process with the commission as gatekeeper is not working. Bill 107 has the promise and potential to rectify this.

Direct access to a hearing, for example, would eliminate the currently duplicative process of investigation. It would most certainly assist the women we serve by demonstrating respect for their experience and ensuring that they have the ability to participate in the process.

In addition to the problems I have already articulated regarding the current process, there are many other serious issues for you to consider in your deliberations. For example, according to the Human Rights Code, everyone has the right to work in a poison-free environment, free from discrimination and harassment. This includes third parties who may not be the direct victims of harassment but who nonetheless experience the negative impact of a poisoned environment. Yet we know of workers—and others, quite frankly—whose third-party complaints never made it past the initial phone contact when they were told that they didn't have a basis to file a complaint because they weren't the direct target of the discrimination and harassment.

Based on our considerable experience in supporting women whose human rights complaints were accepted and filed, we know that the investigation process itself is ridiculously long—as we have already heard today: easily up to five years. Please keep in mind that most complainants will never reach the tribunal process. For those of us at the CKSACC who work with women who have experienced the impact of human rights violations, it seems unusually cruel, and certainly unnecessary, to put them through such a difficult and lengthy process that will most likely end in the dismissal of their complaint. Bill 107 would effectively address this problem.

For those complainants who do reach a hearing, it can easily take another two years or even longer, and then they literally have to go through the same process twice.

They endure the initial investigation that takes place at the commission gate, and then they go through the investigative process again at the tribunal.

It is mind-boggling that the same or very similar work done as part of the investigation at the commission gate is done again at the hearing with the tribunal. How can we possibly justify forcing complainants to endure such an arduous and stressful ordeal, especially, as I have said, knowing that the odds are the complaint will likely be dismissed without a hearing?

The Chatham-Kent Sexual Assault Crisis Centre supports in principle the human rights reform that an amended Bill 107 promises to bring, because we believe that complainants have the right to a hearing without being stopped at the commission gate.

We support Bill 107 because we believe that complainants, as well as the accused, have the right to participate in the process that will determine the outcome of the human rights violation complaint. We support the bill because we are opposed to unnecessarily prolonging, by up to five years, the uncertainty and anxiety for the complainant, as well as the accused, by forcing the duplication of a lengthy investigative process. We support the bill because we view the Ontario Human Rights Commission as a body that ought to represent fairness and equality, a body that advocates for human rights, a body that should not be experienced as adversarial by complainants or by those accused in the process.

We support Bill 107 in principle because our experience tells us that the current system is failing dismally. It discourages legitimate human rights complaints from being filed or pursued, and it leaves many feeling revictimized. It fails to effectively protect the fundamental human rights that everyone in Ontario is entitled to. That said, our support is conditional upon assurance that government will keep its promises to ensure that all claimants are well supported and well represented through a publicly funded system.

Done well, we believe that the legislative reform of Bill 107 will strengthen, in a very real and meaningful way, the protection of fundamental human rights in Ontario. We would be adamantly opposed to any government downloading of its responsibility to ensure that each and every complainant has genuine and easy access to a full and fair process regarding human rights violation complaints. For example, trade union members need to have the same access to government-funded resources, supports, services, advice and legal representation as non-trade-union members. In our view, any movement whatsoever towards a two-tier system of human rights enforcement in Ontario would be nothing short of a denial of human rights protection.

It goes without saying that adequate resources must be allocated to ensure that all claimants throughout every part of the province are well informed, supported and legally represented throughout the entirety of their claim. We would strongly oppose any requirement for user fees, including fees for expenses incurred—a little is a lot when it's all you've got. The protection of fundamental

human rights should be publicly funded. I would agree, however, with costs being applied to respondents who prolong and complicate proceedings through non-cooperation and non-compliance.

A review of human rights services should be conducted on an annual basis by an outside audit as a means of assessing, monitoring and helping to ensure barrier-free, fully accessible, high-quality service delivery.

There is no denying that there has been controversy regarding Bill 107. We have certainly taken pause in this regard, and I personally have had opportunity to debate it with others whom I hold genuine respect and appreciation for. Through our difficult discussions, I have inevitably learned that the opponents I have discussed Bill 107 with do not have any direct experience in filing complaints with the commission or in supporting complainants through the process. It has become abundantly clear to me that many misconceptions exist about the current process. Without exception, opponents I have been in discussion with have held the impression that all complaints currently filed with the commission are guaranteed an investigation and that Bill 107 will diminish that guarantee.

The current system does not in fact guarantee an investigation. I know this with absolute certainty because, as I alluded to earlier, I, on behalf of the Ontario Coalition of Rape Crisis Centres, unfortunately had the opportunity to attend the Ontario Court of Appeal when we successfully applied for intervenor standing in a case where the Ontario Human Rights Commission dismissed a woman's complaint of workplace sexual harassment without an investigation. Thankfully, the woman won her appeal, and the commission was ordered to go back and investigate. In fact, many complaints are currently dismissed without an investigation.

Again, our position is rooted in very real experience, and on that basis we do in principle support Bill 107.

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Having said that, in creating a new system, we believe it is incumbent upon the government to build in a mechanism of accountability that will respect and satisfy affected communities under the Human Rights Code. We believe that such a mechanism should be and would be most respectfully developed in consultation with them. Hard-won gains by marginalized community groups and advocates must not be compromised or diminished in any way.

The CKSACC does not by any stretch want to see a weakening or dismantling of the Ontario Human Rights Commission. To the contrary, our interest is in seeing the commission function effectively as a true advocate and proponent of human rights. We believe that Bill 107 will help to accomplish this.

Through testimony from the director of the public policy and public education branch of the Ontario Human Rights Commission, we learned at the inquest into the workplace murder of Theresa Vince that there was a structural problem with the commission. We believe that effective functioning of the Ontario Human Rights Com-

mission could be significantly improved through Bill 107.

For example, restructuring of the commission could allow for improving the commission's ability, as recommended by the Theresa Vince inquest jury, to study statistical information from complaint data and use it to trace and identify the possibility of links between complaints and a problem work environment. The inquest recommendation noted that if numerous complaints arise from the same workplace, this will alert the Ontario Human Rights Commission that there may be a workplace problem that should be investigated.

We view the commission as a body that should have the ability, and in fact has a responsibility, to bring its own applications, and Bill 107 has the potential to strengthen this aspect of the commission's role. In addition, the commission should be able to intervene in any other application. Its participation would be influential in ensuring that the public interest is served and public-interest remedies achieved.

The commission should have full authority to compel evidence in this regard, including relevant documents or records. A very clear and effective process to ensure compliance should be developed in this regard.

The commission should step up its educative role to raise awareness about human rights issues of discrimination, harassment and related areas. Again, we believe that Bill 107 has the potential to strengthen this aspect of the commission's role. This function ought to include annual initiatives planned for significant dates throughout the year, such as the International Day for the Elimination of Racism in March, Aboriginal Solidarity Day in June and so on.

Groundwork for other educative opportunities by the commission has already been laid. For example, the private member's bill introduced to proclaim the first week of June as Sexual Harassment Awareness Week recently passed second reading and is now in the hands of the justice committee. This would marry quite nicely with the Theresa Vince inquest jury recommendation for the commission to "develop an advertising campaign that would promote public awareness and education. The public needs to be informed of their rights and what services the commission offers." Similarly, the commission could develop campaigns specific to areas of discrimination other than gendered harassment.

Furthermore, in a research and policy-making capacity, the commission would be in an improved position to develop, update and publish policies, policy information and documents that would be easily available and accessible to the tribunal during deliberations.

History and experience have shown that racism, sexism, classism, heterosexism, ableism and so on are systemic in nature and pervasive in societal structures and institutions. In order to ensure its independence, we believe the Human Rights Commission should report directly to the Legislature. Moreover, we believe that specific qualifications and considerations for appointments to the commission should require a demonstrated

commitment to equality, inclusion and diversity. A proven track record of involvement in human rights issues should be mandatory for successful appointees. It should go without saying that the commission itself must be representative of the broad Ontario community. It follows, then, that members of the Human Rights Tribunal must also possess a demonstrated interest, knowledge, understanding and sensitivity regarding issues of oppression and equality. Members of the tribunal must have proven expertise and experience in human rights and justice issues, and of course, they must represent the broad Ontario community.

As previously mentioned, there has been a denial of due process for parties that have contacted the commission with third party complaints. We find this intolerable and strongly urge that Bill 107 specifically address this issue to ensure that Ontario human rights are upheld. This includes the ability of community organizations and equality-seeking groups to file applications on behalf of their constituents. Discrimination is harmful whether or not one is the direct target of it. Everyone has a part to play in stopping the spread of poison in this regard, and third party claims should most definitely be encouraged, supported and processed.

Hopefully, it has been clear throughout this submission that while the CKSACC supports the premise of Bill 107, amendments are required to strengthen it and ensure that it truly upholds the human rights of every person in Ontario. In addition to the issues already identified, there are a couple of practical matters that require your careful consideration as you deliberate. As Jacquie Carr mentioned this morning, Bill 107 currently requires that applications "be in a form approved by the tribunal." We believe the bill must contain language to ensure that a human rights violation complaint will not be dismissed solely on the basis of failure to use the correct form.

In addition, the proposed bill would impose a limitation of only six months to file. We do not agree that this short time frame is reasonable or, in some cases, even possible. As research supports, victims coping with the impact of discrimination and harassment are unlikely to come quickly forward; quite the opposite, in fact. Accordingly, the period of limitation should be increased to two years, and even then, there should be a process built in for making application to extend the time limit where need be.

In all cases, complaints should be duly considered and complainants afforded the courtesy of due process. No complaint should be dismissed, as they are now, without at the very least affording complainants an oral hearing where they have the ability to participate in a fair process, where they have direct access to the decision-maker. We view the current practice of behind-closed-door decision-making as unfair and disrespectful of complainants who file human rights violation complaints in good faith that justice will be served.

In closing, I want to reiterate the importance of government making good on its promise to establish centres throughout the province that will provide a high quality

of information, support, advice and legal representation to human rights violation complainants, and those centres need to be easily accessible. In memory of those whose lives have ended as a final result of discrimination and harassment, especially Theresa Vince and Lori Dupont, and for the countless others who have experienced the impact of discrimination and harassment, we hope that wisdom will guide you, and we wish you well in your deliberations.

Thank you, and thanks also to our great interpreters, who have been doing a great job today.

The Chair: Thank you very much. There's about a minute each, so if we can have brief questions and remarks.

Mr. Kormos: Thank you, ma'am, very much. Clearly, one of the tensions is between the concept of the litigation as a private litigation versus public litigation. I hear you, I understand the argument, but in our criminal system, for instance, police do not always lay charges even when there's a complaint, because they conduct an investigation and use discretion. Even when charges are laid, crown attorneys don't always prosecute charges, because they use their discretion. I suppose it becomes bad when they're using that discretion simply to reduce the caseload, that's when it becomes dangerous.

If I may, Mr. Fenson, I would like to know what the Human Rights Commission has—are there goals for how many cases have to be cleared without litigation?

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Ms. Schryer: May I comment on that as well?

Mr. Kormos: Yes, but is there any evidence from within the commission that they're using this "triage," as somebody referred to it, as a way of simply reducing caseload or are they applying rational analysis to the cases?

Ms. Schryer: I do have a concern about the analogy, because I know that the criminal law process has been so unfriendly and so revictimizing that only about 6% of women ever report incidents of sexual violence against them. I have painful experience that tells me that it is not a friendly process. I would not like to think that victims who have legitimate issues would be reluctant to go forward to the Human Rights Commission because it's also viewed as unfriendly. That's one comment that I really feel strongly should be made.

Mr. Kormos: I want to find out if there's any evidence from within the commission.

The Chair: The government side. Mrs. Van Bommel.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): Thank you for your submission. You mention in the submission that victims go through two processes: They go through the commission and then they go on to the tribunal and have to go through the investigations again. In your experience, as a crisis centre, have you ever had a complainant back away from the process halfway through or have you had to work to continue to encourage them to go through this, and do you think that by giving them direct access you can reduce some of that and actually enable them and empower them more?

Ms. Schryer: In our experience, many women have backed away and stopped the process because it has been too revictimizing, it has just been too difficult or they have felt unsupported. I mentioned that many women have felt that the Human Rights Commission has been adversarial, when in fact the contrary should be true. So many times there have been women who have decided not to proceed, and I do believe direct access would be helpful in that regard. Women who do make it to the tribunal experience that they're going through a duplicative process, in terms of the investigation especially, but also in terms of mediation. When someone has waited and spent seven or eight years going through a process and then they end up in a mediation process where the settlement is so poor and does not address the harm that has been done to them, it's really, really difficult and painful and revictimizing.

The Chair: The opposition. Mrs. Elliott.

Mrs. Elliott: I think we've all sensed through your presentation this afternoon the frustration that so many of your clients have felt in terms of trying to approach the Human Rights Commission; first of all, having their complaints dealt with in a timely manner, and secondly, even just wanting to be heard and just trying to get through those barriers. Like you, I share the reservation that the so-called "direct-access" model will actually provide relief from that situation because of the fact that even with the tribunal, there's no guarantee of a full and fair hearing, subject to all the rules that can be made.

Ms. Schryer: What hopefully would be fairer is that the complainants would have access to the decision-makers, that they would be able to participate in the process rather than have decisions made and never have the opportunity to be part of the process. Decisions are made based on evidence from witnesses that the complainants never know about, so there isn't a sense that a fair process is happening.

Mrs. Elliott: If I could just make one further comment with respect to concerns that the commission will be able to continue to investigate systemic discrimination, workplace harassment—sometimes with tragic consequences—I guess that's another area of concern because, again, that's not completely guaranteed with respect to the new legislation, and I agree with you that we need to make sure that happens so that the situation that has happened with Ms. Vince and Ms. Dupont doesn't happen again.

Ms. Schryer: I agree that Bill 107 needs to have language that will ensure that the commission does have the ability.

The Chair: Thank you for your presentation.

CANADIAN HEARING SOCIETY, LONDON

The Chair: Next is the Canadian Hearing Society.

Mr. Kormos: Chair, while they're seating themselves, if I may ask Mr. Fenson, is there case law in Ontario that indicates that a violation of the Human Rights Code, a breach of the Human Rights Code, creates a cause of

action, as in tort? In other words, have our courts indicated that it does, or have they gone so far as to indicate that it doesn't? That's in the Ontario context. Could you give us some brief background on the US context and whether violation of human rights legislation creates a cause of action in tort, please?

The Chair: Thank you.

Good afternoon. If I could have you identify yourself for the record, please.

Ms. Marilyn Reid: Hi. Yes, I'll start off the introductions. I'm Marilyn Reid and I'm the regional director of the London office for the Canadian Hearing Society.

Mr. Gary Malkowski (Interpretation): Hello. I'm Gary Malkowski. I'm the public affairs consultant to the president and CEO of the Canadian Hearing Society.

The Chair: You may begin.

Ms. Reid: Thank you. Just by way of introduction, the Canadian Hearing Society, CHS, is the largest agency of its kind in North America serving deaf, deafened and hard of hearing people and their families. Founded in 1940, CHS has 28 offices across Ontario, including our regional office here in London. We provide high-quality and cost-effective services in consultation with national, provincial, regional and local consumer groups and individuals. We are a multi-service agency, offering 17 different programs to address a broad range of hearing health care and social service needs. These services include hearing care counselling services for seniors, Ontario interpreting services, employment services, information services, general support services and connect mental health services, to name but a few.

Mr. Malkowski (Interpretation): In general, CHS is pleased that the government wants to improve and strengthen the Ontario human rights system. However, CHS has very serious concerns with the direction of the government's reforms set out in Bill 107 and with the process by which this bill has been brought forward.

We regret that CHS was not consulted by the Attorney General before he announced his plans for reforming the Human Rights Code. We also regret that the government did not take up the proposal to hold an open, accessible, public consultation before introducing Bill 107. By contrast, the government held excellent consultations in 2003 through 2005 as it developed Bill 118, the Accessibility for Ontarians with Disabilities Act.

CHS endorses and agrees with the concerns with respect to Bill 107's content which the AODA Alliance has thoroughly set out in its draft submission to the standing committee on justice policy, which is available at www.aodaalliance.org.

CHS also agrees with the proposed amendments set out in the AODA Alliance's draft submission. I will not repeat all the contents of that document, but I would like to highlight our key concerns and recommendations. These recommendations are offered only in the event that the government decides to proceed with Bill 107 instead of starting over again with designing reforms to the overall human rights system, which would be our preferred course of action.

In general, Bill 107 should be amended to ensure:

(1) that it does not take away any rights that the Human Rights Code now provides;

(2) that it does what the government says it does;

(3) that it does not breach the government's promise to Ontario's disability community for a strong and effective enforcement mechanism to support the Accessibility for Ontarians with Disabilities Act, namely, the continued availability of the Human Rights Commission's investigation and enforcement powers.

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Without taking away from the many important recommendations for amendments set out in the AODA Alliance's draft submission, CHS specifically draws the committee's attention to these recommended amendments.

(1) If the government insists on implementing its direct access proposal, the bill should be amended to let complainants choose to take their case right to the Human Rights Tribunal or to opt for the Human Rights Commission to investigate their case, and to prosecute if evidence warrants. People should have the right to choose to use the commission's process of investigation and prosecution.

(2) The bill should be amended to strengthen, not weaken, the Human Rights Commission's enforcement powers, including expanding its role to monitor and enforce tribunal orders and to plan for removal and prevention of barriers in the human rights process.

(3) The bill should be amended to protect discrimination victims from financial barriers like user fees.

(4) The bill should be amended to ensure that cases now in the human rights system are completed under the current code and do not have to start all over again under Bill 107.

(5) If the Human Rights Commission's full mandate over investigation and prosecution in any case involving disability rights isn't preserved, the bill should be amended to establish a strong, effective, independent enforcement agency under the Accessibility for Ontarians with Disabilities Act, including the power to receive, investigate and prosecute disability discrimination cases.

(6) The bill should be amended to give the Disability Rights and Anti-Racism Secretariats meaningful enforcement powers.

Additional ongoing concerns regarding access for people who are deaf, deafened and hard of hearing: For deaf, deafened and hard of hearing complainants and respondents, full participation in the human rights complaint process is fundamentally linked to ensuring clear, accurate, professional, two-way communication. When the appropriate accommodations are not in place, full participation by this population is de facto compromised.

The Ontario Human Rights Commission lacks clear policies and procedures for providing access and accommodation for deaf, deafened and hard of hearing participants in the human rights complaint process. We have identified major barriers and gaps in accessibility for deaf, deafened and hard of hearing complainants to

the services of the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario.

For example, American sign language and la langue des signes québécoise interpreters, real-time captioners, computerized notetakers, assistive listening devices and other means of communication assistance are not being provided, even for the most essential services. These forms of access are being denied despite a clear statement from the Supreme Court of Canada in the Eldridge case that equal access is guaranteed by section 15(1) of the charter. Recently, the government of Ontario committed to the implementation of the Accessibility for Ontarians with Disabilities Act to ensure that communication access will be put in place.

Most legal clinic offices, lawyers and paralegals are not able to assist deaf, deafened and hard of hearing individuals who have limited English literacy skills and do not understand the Ontario Human Rights Commission intake forms. There is a lack of funding for communication access accommodation. Many deaf, deafened and hard of hearing individuals, especially those who are marginalized, face communication barriers during the process of filing a complaint, intake, interviews, mediation and the investigative process.

OHRC and HRTO face chronic funding limitations that lead to unnecessary delays in the handling of human rights complaints. We are aware of a number of deaf, deafened and hard of hearing complainants who have experienced these delays. In addition to the standard waiting time, deaf, deafened and hard of hearing individuals inevitably end up waiting even longer than average because of the need to book sign language interpreters or real-time captioners. Consumers fear the cancellation or postponement of their scheduled OHRC meetings due to a lack of availability of appropriate communication accommodation. Cancelling or postponing commission or tribunal sessions would mean an additional wait of at least three to six months just to set up another meeting or hearing.

Limited financial resources and insufficient staffing levels lead to problems with the effectiveness of the Ontario Human Rights Commission. For example, in some human rights cases involving deaf and hard of hearing complainants, the Ontario Human Rights Commission lawyers have been so backlogged that deaf and hard of hearing complainants have been forced to hire their own lawyers to ensure that they have quality legal services.

In some cases, deaf, deafened and hard of hearing commission complainants are not able to afford qualified lawyers to represent their complaints while the respondents, who are often well-resourced governments or large companies, are able to afford expensive and well-qualified lawyers to represent them. The proposed change in Bill 107 that eliminates investigations presents a serious barrier for deaf, deafened and hard of hearing complainants. Many legal aid services across Ontario will not take on human rights cases, leaving these complainants with no representation when trying to fight big companies or governments.

Another issue is the potential conflict of interest that can arise due to the current reporting structure. As it stands, the Ontario Human Rights Commission reports to the Ministry of the Attorney General, which could compromise complainants' cases against a specific ministry's policies or procedures. A more objective reporting structure that sees the Ontario Human Rights Commission reporting directly and independently to the Ontario Legislature would be a significant improvement.

Ms. Reid: In conclusion, certainly CHS strongly endorses the immediate need for establishing an enforceable and effective Ontario Human Rights Code Amendment Act. It is important that Bill 107 include an enforcement mechanism, quality assurance and sufficient resources to ensure that qualified accommodation measures are available, such as sign language interpreting, real-time captioning, deaf-blind intervention. The legislation needs to have authority and be suitably funded so that proper systems can be set up to monitor and enforce the Ontario human rights system by strengthening the Ontario Human Rights Commission.

Bill 107 will clearly be inadequate unless amendments, as recommended by the AODA Alliance, are made before third reading. Bill 107 falls significantly short of what is needed to strengthen and improve the effectiveness of Ontario's human rights system.

CHS is prepared to work closely with the Ontario Human Rights Commission or any future human rights system to develop appropriate policies and provide much-needed awareness training for human rights personnel to ensure that deaf, deafened and hard of hearing individuals can be full participants in any human rights proceedings in which they are involved.

It seems that our presentation builds on the themes that have been presented previously today. The fact that these issues have been raised again and again supports the importance that these issues do need to be addressed. Thank you.

The Chair: Thank you very much. About six minutes each, and we'll start with the government side.

Mr. Kormos: Mr. Zimmer, you can have my time if you'd like.

Mr. Zimmer: All right. I get all your time?

Mr. Kormos: Yes, as long as you allow Mr. Malkowski to answer.

Mr. Zimmer: Thank you very much for your comments. As the parliamentary assistant to the Attorney General, let me assure you that I will convey those comments to him on behalf of the Liberal side of this hearing. But even more importantly, the role of this committee is to listen carefully to everything that was said.

In response to your point, the disappointment that you expressed about not being consulted, that's what this committee hearing is designed to do. We're sitting here in London today, tomorrow we're in Ottawa, Thursday we're in Thunder Bay. We've advertised widely about these committee hearings. There are further committee hearings in Toronto when we return from Ottawa, London and Thunder Bay. Notice was given extensively

in the provincial newspapers throughout the province advertising the hearings and the legislation, and inviting written submissions or attendance. We do have your very detailed submission. To date, we've consulted since the bill was introduced with many, many stakeholders.

This morning I read in an excerpt from the statement the Attorney General made in the Legislature in the spring—in June, I think it was—in answer to a question from Ms. Matthews, who is the MPP for London North Centre at the end of the table. Ms. Matthews shared many of the concerns in that question that you have today about consultation and, more importantly, amendments that the government might take after consultation and considering the submissions and what we hear on these committee days. I don't know if you were here this morning, but I will paraphrase what that statement was. It was a clear statement in answer to Ms. Matthews's question and a clear commitment that the government was prepared to consider and indeed the Attorney General quite specifically committed to some amendments having to do with legal representation for people with matters before the commission.

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To your point, we are trying to consult widely. The job of this committee, after the committee hearings have finished and after all the written submissions have been entertained, is to have a discussion and make recommendations to the government about what should go ahead in the nature of amendments. But be assured that this committee and the government and the Attorney General's office have an open mind on many of these matters that we're hearing about today. In the audience, we do have representatives from the Attorney General's office on the civil service side and on the political side. So we are taking a comprehensive look at all of the matters that are coming before this committee.

Mr. Malkowski (Interpretation): I'd like to respond to that. There are two problems that we have identified. The first is specifically with Bill 107. There are problems with the way it is written and with the expectations of it. We missed an opportunity in its creation to have any input as it was being developed or in the initial stages. That was definitely a problem.

The second point is, we'd like to see a following of the same policy of in-depth public consultation that occurred with Bill 118. There was plenty of time in advance of that bill being developed for input on the writing of it, and we congratulate the government for the work that they did in preparing it. We're in a conundrum because, while it was well written and well consulted in its development phases, it has been undermined by this bill, taking away the powers of Bill 118.

We haven't seen any amendments at this point that have been suggested by the minister. What kind of amendments they're intending to put forward haven't been made available and we haven't seen anything. What enforcement mechanisms, what powers will be given to the commission, we don't know, nor what kind of legal representation people are going to be receiving. While

the commitment has been made, we don't know what that's going to look like. I saw him when he made that statement in the House, but it really doesn't mesh with what we've been discussing this morning. That's an issue that we want to emphasize.

Mr. Zimmer: The point of the public hearings is to gather these responses and then have this committee make its recommendations about amendments to the Attorney General and to the government of the day. So after we've heard from everybody, amendments will be put forward.

Mr. Malkowski (Interpretation): What is the time frame for the writing of the amendments to Bill 107? What kind of timelines are we going to have for public consultation into that amendment-writing process?

Mr. Zimmer: We're hopeful that the end piece of this new human rights legislation is some time in the upcoming legislative session which is starting in September and probably concluding around Christmas, just before Christmas or early in the new year. So we have a process of four or five months ahead of us.

The Chair: Mrs. Elliott?

Mrs. Elliott: You have raised some significant concerns that, as you've noted, have been mentioned by a number of other groups, which does highlight the seriousness of the concerns that you have and the need to be careful in terms of dealing with this legislation as we go forward and take the time to do it right, to consult with all of the groups that need to be consulted. I certainly share your concerns with respect to those issues.

The other issue, though, that you have brought forward is some of the concerns that are particular to the Canadian Hearing Society with respect to communication access. I think it's been very helpful for you to bring up those particular concerns for us to consider as well, so I thank you very much for that.

Mr. Malkowski (Interpretation): I'd like to make mention of a point. The Charter of Rights and Freedoms takes precedence over any other piece of legislation, so it exists already. Based on that, there is really a questionable point to writing a lot of amendments. The decisions on how people need to be treated are determined in the charter. We now have also the AODA, which provides us with a piece of legislation, although it has no regulations at this point. That people should be going to the Supreme Court over and over again is a redundancy that we really don't need. The point that I want to make is that these violations don't happen again and that things are encoded very clearly as to how they need to be handled, particularly when they've already been decided in the Supreme Court.

Mrs. Elliott: I would just say that I think we need to make sure that we recognize that in this legislation as we move forward with it, probably more in terms of procedural issues and making sure that the supports are there rather than having to fight the same battle time and time again.

Mr. Malkowski (Interpretation): Right.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: How much time do I have?

Interjection.

Mr. Kormos: No, you didn't use all of it. I've got more left. How much time do I have, Chair?

The Chair: About eight minutes.

Mr. Kormos: Thank you very much. The AODA appears to be proposing a system whereby a complainant can elect to either use direct access in a system which some of us would call a private system or to use the public advocacy of the commission. Is that an accurate understanding of at least that recommendation?

Mr. Malkowski (Interpretation): It's really important that there's a range of options made available and that the resources are put in place so that individuals have choices. That includes the Human Rights Commission as well. There are a lot of people who cannot afford their own private legal services, so if there's a legal support service provided as the third pillar, then there has to be public money guaranteed. It's been stated for the first couple of years, but what's going to happen after that? Again, there hasn't been anything mentioned specifically around how that's going to happen, any guarantees. There are many "mays" that are in the bill, a lot of things that may happen or may be done, but it's very vague and uncertain.

Mr. Kormos: You're well aware of the efforts by the commission on behalf of kids with autism. My fear is that without a commission, with only direct access, those kids and their families, for but one example, could well be left behind in litigation that is very complex, that requires a lot of expert witnesses, volumes and volumes and volumes of reports and studies and also, of course, a need for huge levels of investigation. Do you share that perspective?

Mr. Malkowski (Interpretation): If individual complaints are not dealt with by the commission and are dealt with only by the tribunal—they currently have six staff at the tribunal and the commission has somewhere in the neighbourhood of 35 staff, so in total you're talking about 41 staff as part of the two branches. You can transfer those staff to different departments, but you're still going to have the same number in total, 41 staff. You're still going to have the same number, and you also have the same budget, so it's just moving it around; it's just a shuffle and possibly creating a number of red herrings in the process for people. The problem will not be resolved by handling it that way, so it's important that the Human Rights Commission and the Human Rights Tribunal of Ontario have the appropriate funding and have the human resources in order to expand the staffing and guarantee the legal representation for all human rights complaints that are brought forward to the tribunal.

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Mr. Kormos: Have you dealt with the commission as a complainant or as an advocate for complainants?

Mr. Malkowski (Interpretation): Yes, I have. I am a user of those services.

Mr. Kormos: One of the participants here earlier this afternoon suggested that people who oppose Bill 107,

like you, are people who have never had to deal with the commission. Is that an entirely accurate comment on that participant's part, on that witness's part?

Mr. Malkowski (Interpretation): I'm sure it's a very individual experience. In our experience with deaf and hard of hearing complainants, the system needs improvements for it to be effective. The limited resources that they have available are problematic. People who haven't experienced going through the process with the commission probably should be talking to those who have, and they might have a clearer picture of what that process is like.

Mr. Kormos: An observation that all of us are compelled to make on a daily basis is that notwithstanding the charter of rights, notwithstanding court rulings, notwithstanding the Human Rights Code, discrimination is pervasive. I just, in closing, want you to tell these folks what's happening right now, however incredible it is that we have to struggle for this, for deaf, deafened and hard of hearing people in the movie industry.

Mr. Malkowski (Interpretation): Well, I'm wearing my CHS hat today, and so as an individual I would prefer not to comment on a human rights case that is currently before the tribunal. But in general, what's happening for people who are deaf, deafened and hard of hearing is that they are experiencing discrimination on many fronts, and many of them become overwhelmed because they are dealing with personal issues, employment issues, issues of accommodation in many, many situations, and they become overwhelmed by this. Thousands of them are just not willing to file complaints, because they have no guarantee of legal representation in the process. Now with Bill 107, that increases concerns for people who are disabled, including those who are deaf, deafened and hard of hearing, in terms of what the future is going to look like in those processes. What we need is to see guaranteed, appropriate legal representation and communication access being appropriately provided to prevent the discrimination happening in the system and to reduce discrimination in general.

With the AODA legislation currently without regulation, now we're also talking about it being without enforcement as well. Bill 107 is a key piece there. So the AODA would become a joke. I mean, it looks like a circus.

Mr. Kormos: Thank you. I suppose the last comment I have to make—because I appreciate you're wearing the Canadian Hearing Society hat; I'm not—is that I urge my colleagues here to go to the website www.cmnc.ca for some remarkable advocacy on behalf of the deaf, deafened and hard of hearing in something so taken for granted by so many people as a movie theatre. It's remarkable that that struggle has to take place in the year 2006, after a charter of rights, after a Human Rights Code, after Supreme Court rulings.

Thank you, both of you folks.

The Chair: Thank you very much.

Mr. Malkowski (Interpretation): Thank you. I'd like to put one more comment on the record. I want to thank

all of you at the standing committee for making this environment accessible. You've got it not only closed captioned on a large screen, but also on the small screen here for the people deposing. Congratulations and thank you.

MARIANNE PARK

The Chair: The next presenter is Marianne Park. Good afternoon.

Ms. Marianne Park: Good afternoon.

The Chair: You may begin.

Ms. Park: I want to thank you for this opportunity. My name, as was said, is Marianne Park. I live in Woodstock, Ontario. I have the distinction of being a woman with a disability, and I also have worked in the violence against women field now for probably longer than I care to remember, but at least 20 years. I have also had the privilege of serving on a number of boards which are actually going to be making submissions to this committee in the weeks to come. I serve on ARCH Disability Law Centre. I serve on the board for DAWN, DisAbled Women's Network Ontario, and I also serve on the board for the Income Security Advocacy Centre, ISAC, and they will be making a presentation.

So I've been very blessed in that I've had an opportunity to look at a lot of different opinions on Bill 107—reams and reams of material—but I'm speaking to you as an individual, and an individual who has assisted a number of complainants through the human rights system around the issue of workplace harassment. Consequently, that's who I'm speaking on behalf of: a number of the folks I've assisted, and just my own observations.

I want to commend the government for its intention to alter a seriously backlogged system that is in need of overhaul, and that's just enough said there. However, there are a few issues that I want to address. Now, we could go through line by line—I realize there's not the time—but there are a couple of issues I wanted to make very clear. There are three actual issues that I'll be commenting on, but some overarching issues.

One overarching issue is the need for accessibility, to make the system accessible and usable by everyone in the province, but particularly by women with disabilities—my constituency—and of course women who are deaf, deafened and hard of hearing as well. Because the one key to the issue of human rights violation is the issue of intersectionality. It's a very specialized knowledge, intersectionality, and it's a very complex issue, but it has to be taken into account almost with every complaint. Not just those of us who are marginalized experience that intersectionality, but there are many intersections in everyone's lives. But for those of us who are marginalized, oftentimes that's where the violations of our human rights will take place, in those intersections, and it's impossible to segregate out. If I am marginalized or if I'm discriminated against, is it because I'm a woman with a disability or is it because I'm a woman or is it because I live in a rural area or I don't have access to power or whatever it is. So that's very key, and it's a

very specialized knowledge, just as the pool of knowledge around the issue of disability is a very specialized knowledge that needs to be woven into the fabric of Bill 107.

I believe that the commission, the system, should be independent and should report directly to the Legislature. I believe that there should not be user fees for applicants at all. Yes, I think it's a fine idea that respondents who delay the process are assessed with fees, but no user fees for applicants, because it is very difficult for many of us to get up the nerve, if you will, to embark on a very arduous process as it stands now. And even in the ideal situation, all things being equal, if Bill 107 was amended and it was just the best system going, it's still a very arduous system for folks to navigate, particularly if you are marginalized. The last thing you'd have to be concerned about, I would hope, would be user fees.

So the three issues that I wanted to really home in upon: One is the appointment of public members to both the commission and the tribunal, and if indeed there are advisory groups. The other issue is the disability secretariat. And finally, the legal support centre.

Around the appointment of public members to the commission or the tribunal, I believe that it needs to be a fair and open process, not a political reward. Individuals need to demonstrate a proven track record with an interest in human rights. I think preference, in all honesty, should be given to folks who have had a lived experience around that issue of human rights, but that they have a demonstrated track record. Once someone is appointed to the tribunal, then most definitely they should be willing to submit to a performance appraisal before they are reappointed to the tribunal.

If indeed advisory committees are struck, then those advisory committees folks need to be compensated through per diem and expenses for their effort and for their work. I think that advisory committees could be a very helpful tool, particularly around the issue of workplace sexual harassment because it's a very specialized knowledge. Although at face value it seems very easy—it's just a power imbalance—there are many complexities. So I think that would be one area where an advisory committee would be very helpful.

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That public appointment process, as I say, needs to be fair, needs to be open. In turn, as with everything with Bill 107, the overarching issue is that it needs to be accessible. That is one issue.

The other issue is the disability secretariat. I can see the logic in having the disability secretariat. However, my concern is that this, as it is currently stated in the bill, will become a dumping ground for any disability issue, something that will be underfunded. It will allow the government and others to escape accountability, because we do know that the Ontario Human Rights Code is the underpinning for the Accessibility for Ontarians with Disabilities Act. That's very, very key.

We also know that presently, overwhelmingly, the number of cases that go into the process are around the

issue of discrimination and disability, just as, unfortunately, I know of a number of cases around the issue of workplace harassment that never make it out of the gate because the issue is so complex and the system is so difficult to navigate.

But harkening back to the disability secretariat, that is my concern, that as it is presently structured, it would be a dumping ground, and hence nothing would really be accomplished other than the ghettoization of those of us with disabilities. I think that we need to be cognizant of the inclusion aspect. I believe, as I said, that disability is a very specialized knowledge, just as knowledge of the deaf culture is very specialized knowledge, just as workplace harassment is very specialized knowledge. But it's much better, through the intersectional approach, to have that woven into all aspects of the system rather than it being segregated in one system.

Finally, the other issue that I want to speak about is the legal support centre. I think that one amendment—and it's a small word change—will be very helpful. It should be altered so that instead of saying everyone “may” have access to the legal centre, it is “shall” have access to the legal support centre. Anyone you speak to who has had a successful outcome with the Human Rights Commission process has not done it on their own. They have done it with advocates; sometimes a paid advocate, sometimes folks like myself or, like you heard this morning, Jacquie Carr, folks who do it on a volunteer basis because it's the right thing to do. But if they have a successful outcome, they have an advocate. That's why it's very important that there be that advocacy role.

I'm a big believer in the LaForest report that looked at the issue of case managers, so that once you started into the system you would have a case manager that followed you through the system and assisted you in the system. That's a great idea. But if you're going to set up a legal support centre, I urge that it not be folded into and downloaded into the existing clinic system through Legal Aid Ontario. It needs to be a separate stand-alone clinic. That clinic system is now overburdened presently and grossly underfunded. Consequently it can't be expected that clinics will take on extra work. But whatever legal support system is set up, it needs to be province-wide, it needs to be accessible. It needs to be so that someone who needs to access that because of a human rights violation, whether they live in Summer Beaver, Walsingham, Ottawa, downtown Toronto or here in London, has a level playing field and the same type of access.

I can't stress enough that, yes, you need supports and you need a support system, but that has to be adequately funded. That's key. For myself, that's the most disconcerting thing: I haven't really seen the nuts and bolts as to (1) where the money is going to come from and (2) what's it actually going to look like and how this is going to unfold.

I realize, as with many things, particularly with government, things happen in the fullness of time. I understand that completely. But I think that is one of the great things that many in the community are uneasy about:

How is this going to happen, when is it going to happen and what will it look like?

In conclusion, I want to again thank you for the opportunity of speaking. I also want to say that human rights is a very important issue to all of us here, not just those of us who are marginalized, sometimes on a daily basis. I want to commend the government for its efforts and I also wanted to say that I'll be anxiously awaiting what the outcome will be after your consultation and what this bill will finally look like. Thank you.

The Chair: Thank you. Approximately three minutes for each side, beginning with the opposition. Mrs. Elliott.

Mrs. Elliott: Thank you, Ms. Park. I appreciate your comments with respect to the vitally important aspect of ensuring there is appropriate legal funding so that everyone who needs representation will have it. As you know, section 46, as it's presently drafted, doesn't give us any sense of comfort with respect to that issue. It only indicates that the Attorney General can make arrangement with provision of legal services, be that legal aid, a legal support centre or whatever. All we have so far is a statement by the Attorney General that there's going to be a legal support centre. That's going to take a great leap of faith for me, for one, to get to that point where I'm going to be comfortable with it without it being enshrined in the legislation. I suspect that many of the participants and many of the people who have presented here today feel the same way. That's just a comment.

I did have one question with respect to the intersectionality approach that you're discussing. Would you rather see the secretariats themselves not proceed and have a different approach being taken at the commission level? Could you expand on that a little bit, please?

Ms. Park: I would say, if the secretariats are to proceed, although I would proceed with great caution, I'd rather just see the commission have the ability to strike panels of inquiry into issues. But I would think that they need to be fleshed out much better than they are now. There also needs to be more thought given to that intersectionality too. How is a woman of colour who has a disability going to be experiencing the system, rather than “Where do we put this issue?” That's what my concern is, that it'll just be almost like turning out biscuits: “You have this distinction, so you need to go there and you need to go here.” That's my concern.

Mrs. Elliott: You just can't drop it in one box.

Ms. Park: That's right, exactly.

Mrs. Elliott: It needs to be looked at across a broad spectrum. Thank you.

Mr. Kormos: Thank you, Ms. Park. Very potent comments. I suppose, very quickly, address two things. One is the legal support centre. I think most people share your concern or apprehension; for instance, the Office of the Worker Adviser. For all of us in our constituency offices, that's probably amongst the top five of complaints, because those people are so understaffed, under-resourced, and they do, effectively, in the context of workers' comp what this legal support centre would do with human rights cases. But the backlogs to get into the Office of the Worker Adviser are months and months,

almost years in some areas, never mind then workers' comp. So there are some real problems there.

Access—it's just never-ending, the issues. Bill 14, to the credit of its authors, amongst other things, reforms JP appointments. This is new legislation; it hasn't been passed yet. It provides that if a JP, a justice of the peace, becomes disabled once he or she is a justice of the peace, then the Chief Judge can order such supports as are economically feasible for that JP to continue to do his or her job. However, there's no provision for somebody who is applying to become a JP. Again, to the credit of the authors, they tried to address the issue but they missed the bull's eye. They want to show concern and support for persons with disabilities, but if there were true recognition of the valuable role that all people can play, the support would be there for the people applying for the job of JP.

Ms. Park: That's true.

Mr. Kormos: Again, it's interesting that the authors of this bill didn't emulate the drafting in Bill 14, because there is no reference in the appointment of tribunal members under the new act to ensuring that persons with disabilities will have as much access to that job as any other persons, with supports being guaranteed. Your comments provoked that recollection on my part of that part of Bill 14. We're going to be talking about that in due course too. But here's an opportunity to—dare I say it?—put your money where your mouth is. This will come up in clause-by-clause, you can count on it. Thank you very much for your comments.

The Chair: The government side. Mr. Berardinetti.

Mr. Berardinetti: I just wanted to thank Ms. Park for her comments here today. They've been duly noted. When we go through the process later on of doing clause-by-clause, hopefully some of your comments will at least be debated or maybe even incorporated—I can't say that for sure, but at least debated—during that part of our committee hearing. Thank you very much.

The Chair: Thank you.

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ST. THOMAS AND DISTRICT LABOUR COUNCIL

The Chair: Next is the St. Thomas and District Labour Council. Good afternoon. If you could state your name for the record, sir, you may begin.

Mr. Bob Howes: My name is Bob Howes. I reside in the city of St. Thomas and I am a declared candidate in St. Thomas for the municipal elections being held on November 13, 2006. I am presenting today on behalf of the St. Thomas and District Labour Council, of which I am an executive member.

I can't help but comment on the article that ran in the London Free Press on Saturday, August 5, titled "Rights Overhaul Planned," in which MPP David Zimmer gave his view of the summary of changes to the Human Rights Code through Bill 107. At first glance, I realized that the changes being proposed had very little thought put into

them and appear to be a quick-fix solution orchestrated by the McGuinty government without any input from the community or the special-needs groups they are so likely to affect. The McGuinty government needs to listen and take guidance and input from the affected communities and organizations that represent them at the grassroots level.

It is not difficult to foresee that the current proposed changes will further marginalize immigrants, people with disabilities, racialized people, women, aboriginal people and other disadvantaged groups.

The article further states that the human rights system will be improved by creating a new human rights legal support centre that would provide information, support, advice, assistance and legal representation for those seeking a remedy at the tribunal. Nowhere in the proposed act is there a guarantee that these services will be publicly funded or that it will ensure public accountability.

Zimmer also said the new system will provide "two pipelines" for issues to be resolved. This brought back memories of a similar ineffective model that was implemented in British Columbia. The dismantling of the British Columbia human rights system resulted in a two-tier, semi-privatized human rights system in which complainants with financial resources could hire lawyers to help them navigate the complex process while marginalized people are left on their own.

It is crucial that all people from the community are able to access fully funded public legal representation throughout the human rights process. This must not be left at the discretion of government funding. The human rights legislation must state clearly that all costs will be covered. The burden of financial responsibility should not be placed on the complainant.

In a rush to make changes to the human rights legislation, this government has ignored the community. Bill 107 erodes the basic premise that we are a country that values human rights. Bill 107 in fact creates another barrier. The members of our community in Ontario who need access to the human rights system to resolve discrimination do not need barrier after barrier. All they need and want is dignity and justice. It would be better for the government to start from scratch to draw up a new bill.

I have reviewed the draft submission prepared for the standing committee on justice policy on Bill 107 to be submitted by the Accessibility for Ontarians with Disabilities Act Alliance, and I fully endorse this package. It is available on the alliance's website, and you have all received a copy of this presentation. That address is in this presentation.

Ontario's human rights enforcement system needs to be significantly improved. It is far too slow and backlogged. This has occurred because it has been seriously underfunded for years and needs new administrative reforms.

Bill 107, in its current form, is seriously flawed. It does not solve any of these problems. It only makes things worse.

(1) It takes away a victim's right to a public investigation of their human rights complaint by the Human Rights Commission, armed with its investigation powers. It strips discrimination victims' right to have the Human Rights Commission publicly prosecute their case if the evidence warrants it and if the parties don't voluntarily settle the case. If this bill passes, victims will have to do their own investigation and prosecution or find someone to do it for them, probably for a fee.

(2) Contrary to government commitments, it does not ensure that every human rights complainant will have publicly funded legal advice and representation. It just lets the government fund legal assistance if it wants. Funding cuts can be a provincial election or a cabinet shuffle away. It does not entrench the government's promised human rights legal support centre. It does not require that legal services be delivered by lawyers.

(3) It lets the tribunal charge user fees. It could let the tribunal force human rights complainants to pay their opponent's legal costs at hearings if they lose. At present, the tribunal can only order the commission, not the complainant, to pay the legal costs of the party accused of discriminating. This bill will make discrimination victims afraid to bring their case forward.

(4) It lets the tribunal make rules that strip the right to be represented by a lawyer at a hearing, to call relevant evidence and to cross-examine opposing witnesses.

(5) It dramatically reduces the right to appeal from the tribunal to court. Currently, anyone losing at the tribunal has the right to appeal this decision to a court of law. Bill 107 only lets the loser go to court if the tribunal decision is patently unreasonable, a far tougher test with no real definition.

(6) It unfairly forces thousands of discrimination cases now in the human rights system to start all over again in the new system, without any help from the Human Rights Commission. Many victims spent years trusting that they could use the current system. What will happen to them now?

(7) It does not keep the government's commitment that all discrimination victims will have a tribunal hearing. It lets the tribunal reject a case without a hearing.

(8) It does not reduce the backlog. It shuffles the lineup from the Human Rights Commission to the tribunal. It does not set enforceable deadlines to ensure that cases are promptly heard and decided.

(9) Breaching government commitments, Bill 107 weakens the Human Rights Commission's ability to bring forward its own cases to challenge systemic discrimination. Currently, the commission can launch a complaint in any case, not just systemic cases. It has investigation powers to get evidence. It can seek sweeping remedies to compensate discrimination victims for past wrongs and prevent future discrimination. Bill 107 only lets the commission launch its own investigation in systemic cases. It does not define "systemic." It is based on the false idea that cases are either individual or systemic. It strips the commission's investigation powers. It stops the commission from seeking remedies to compensate victims for past wrongs.

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(10) It largely privatizes human rights enforcement. It removes the commission from most discrimination cases. This makes the commission less effective when it does public policy, advocacy and public education.

(11) It dramatically shrinks the human rights system's capacity to protect the public interest. Right now, the commission can seek remedies both for individual discrimination victims and to address the broader public interest. It can do so when settlements of cases are negotiated and at tribunal hearings. Under Bill 107, the commission will not be involved in negotiating most case settlements. It will not have carriage of or even be at many, if not most, tribunal hearings.

(12) With Bill 107, the McGuinty government seriously breaks faith with 1.5 million Ontarians with disabilities. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After the election, the McGuinty government rejected disability community requests to create an independent agency to enforce the new disability act. The government said it isn't needed since persons with disabilities can use the Human Rights Commission's complaints process to enforce their rights. The disability community applauded the new 2005 disability act, though it created no new independent enforcement agency. Now Bill 107 takes the Human Rights Commission's enforcement teeth away.

Bill 107 does not correct this breach of faith by setting up a weak Disability Rights Secretariat. This new secretariat has no public investigation or prosecution powers. The commission currently has a stronger version of that secretariat in place now.

My recommendations to the McGuinty government:

(1) to hold open and accessible hearings with all workers and community members, particularly those who are continuously disadvantaged by discrimination issues;

(2) to properly fund the commission in a sustainable manner;

(3) to amend this legislation to make the Human Rights Commission accountable to the Legislature in order to ensure independence;

(4) to significantly reduce processing time of complaints. Mediations should be completed within three months, complex investigations should be completed within one year, and a tribunal decision should be rendered no later than two years after the filing of the complaint;

(5) to put procedures in place that ensure that complaints involving minimal investigation, crisis situations and significant public interest are fast-tracked through the system. These procedures also need to ensure that complaints that require investigation have access to publicly funded investigators through the commission;

(6) to ensure that in every case, the Human Rights Commission is actively involved, both at the settlement negotiations and at the hearings, to advocate for the public interest and for public interest remedies;

(7) to give the commission the power to enforce and monitor the settlements issued by the tribunal; and

(8) to implement a long-term plan to prevent discrimination and reduce the number of individual complaints. This plan should include a significant increase in the number of commission-initiated complaints, public education activities and other systemic initiatives.

What we need from you: It would be better if the government started from scratch and held a proper time-limited public consultation and then introduced an appropriate human rights reform bill. However, if the government presses Bill 107 forward, the bill should be amended to address these themes: to ensure it does not take away any rights the Human Rights Code now gives; to ensure it does what the government says it does; and to ensure it does not breach the Ontario government's understanding with Ontario's disability community over enforcement of the Accessibility for Ontarians with Disabilities Act regarding continued availability of the Human Rights Commission's investigation and enforcement powers.

Therefore, amendments are needed to:

(1) let the complainants choose to take their case right to the tribunal or opt for the Human Rights Commission to investigate their case and to prosecute if the evidence warrants;

(2) guarantee all complainants a publicly funded lawyer at all tribunal proceedings;

(3) ensure that all complainants opting for direct access to a hearing get a hearing within 90 days of filing their claim and that the tribunal cannot dismiss or defer a case without having a hearing, and to impose enforceable deadlines for major steps in the proceeding;

(4) ensure hearings are fair; for example, to stop the tribunal—the judge—from also being the investigator;

(5) strengthen, not weaken, the commission enforcement powers, including expanding its role to monitor and enforce tribunal orders, and to plan for removal and prevention of barriers in the human rights process;

(6) involve the commission in all cases, at settlement discussions and at tribunal hearings, to advocate for the public interest and for public interest remedies;

(7) give the Disability Rights and Anti-Racism Secretariats meaningful enforcement powers;

(8) make the commission meaningfully independent of government;

(9) let complainants retain their right to appeal to court if they lose at the tribunal;

(10) ensure the public has input into any tribunal rules;

(11) make mediation available, without forcing it on those not wanting it;

(12) protect discrimination victims from financial barriers like user fees;

(13) ensure that cases currently in the human rights system are completed under the current code; and

(14) ensure annual public reviews of the code's effectiveness.

I want to thank this standing committee for your ears and your time, and I sincerely hope that you will take my comments with you throughout this process and back to

the cabinet and caucus for the positive review and changes I feel are needed.

The Chair: Thank you very much. We'll begin with Mr. Kormos, about four minutes each.

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Mr. Kormos: I just want to acknowledge and indicate that Bob Howes's submission to this committee this afternoon is a demonstration of how incredibly effective he would be as a member of the St. Thomas council. I wish him well in that regard. We need labour people at all levels of government.

You appear very much to endorse the proposition by AODA, amongst others, that there be choice on the part of a complainant, that the complainant have a right to either access the tribunal privately with his or her own counsel and forgo the role of the commission, or enter through the commission entry door and use all of the resources of the commission. Am I clear in that regard?

Mr. Howes: Pretty clear.

Mr. Kormos: My understanding from the stats is, gosh, that half—maybe more than half—of all complainants have their complaints resolved by the commission simply through discussions with the other party, through mediation, any number of processes. Do you regard that as a pretty valuable function on the part of the commission?

Mr. Howes: Yes.

Mr. Kormos: Because the observation is made by you and others that all those complaints that are not being resolved by the commission—if there's a lineup at the commission now, there's going to be an even longer lineup at the tribunals. What's your perspective in that regard?

Mr. Howes: I'd actually have to think about that one. I guess it depends on how well funded these tribunals are. I think that the Human Rights Commission as it stands right now is underfunded and I think that's why there is such a backlog in cases. I think there need to be some administrative reforms looked at that would address your backlog in cases.

Mr. Kormos: Thank you kindly. You've been a very effective spokesperson for your community and people from all backgrounds here today, and once again I wish you well in your municipal electoral bid.

The Chair: Thank you. The government side.

Mr. Zimmer: Are you with OPSEU? What union are you with?

Mr. Howes: I am with the Ontario Public Service Employees Union.

Mr. Zimmer: Just to use the model that OPSEU has for complaints, they have a complaint tribunal and members can put in a complaint. I understand that it's a direct access model, so everybody in OPSEU has direct access to your complaints tribunal. Is that correct?

Mr. Howes: I would have to look that up.

Mr. Zimmer: My understanding is that OPSEU members have direct access to their complaints tribunal.

Mr. Howes: We have direct access.

Mr. Zimmer: Yes. So wouldn't you like to see a model like that available to everybody else in Ontario? I just leave the thought with you. Thank you.

Mr. Kormos: He's already indicated he supports [inaudible] and he supports the option—

Interjection: Let him answer.

Mr. Kormos: I'm just trying to help Mr. Zimmer, because Mr. Zimmer clearly didn't hear Bob when Bob was articulately expressing the position of his labour council.

The Chair: Are you finished?

Mr. Zimmer: No. OPSEU has a direct access model in their complaints tribunal. Would you like to see a direct access model for the rest of the people in Ontario?

Mr. Howes: I would like to see a model like I just explained to you here in this presentation.

Mr. Zimmer: Not the OPSEU model?

Mr. Howes: I don't know.

Mr. Zimmer: Thank you.

The Chair: Mrs. Elliott.

Interjections.

Mrs. Elliott: Mr. Howes, I'd just like to follow up on one of the points that you made, and that's with respect to streamlining the process so people can have their complaints resolved as quickly as possible. I think most of the criticism that's been raised so far with respect to the current system is that it takes too long and that people have the perception that they're not being heard, that they feel they're not receiving the access to justice that they want. Yet as we look at this legislation, it doesn't really deal with that. It doesn't really deal with the over 2,000 backlogged complaints that we have, doesn't really indicate that there's going to be a faster resolution. There are no timelines built into the tribunal process and so on.

I guess with your position you're saying that people would probably want to choose whatever way they can both have their complaint resolved in an efficient manner, quickly, and also be able to be heard in the way that's most important to them, either by way of an investigation by the commission or with respect to a hearing before the tribunal, and choice is going to be important to ensure that. Is that fair to say?

Mr. Howes: That's fair to say.

Mrs. Elliott: Thank you very much.

The Chair: Thank you for your presentation.

BILL HILTZ
JOYCE BALAZ

The Chair: The next presenters are Joyce Balaz and William Hiltz.

Mr. Bill Hiltz (Interpretation): Hello. I am Bill.

The Chair: Can I have your attention just for a second? If you can introduce yourself, and you may begin. You have 20 minutes. You'll have to speak into the mic.

Ms. Joyce Balaz: That's what he was doing. He said, "Hello. I am Bill."

The Chair: Okay. Just so that the sign—yes.

Mr. Hiltz (Interpretation): Joyce will help me.

Ms. Balaz: For good reasons; you can see why.

As Bill said, this is Bill Hiltz. I am Joyce Balaz. I'm here to support Bill in his efforts. Bill is completely non-verbal, and by using his various specialized methods of communication has worked on this submission with me. Therefore, this submission is being brought forward on behalf of both of us.

Bill and I have been actively advocating for equal rights for all persons. We believe very strongly that all people have the right to be contributing members of society and that no one should be defined by their disability. Every individual must be considered a person first.

We agree that people of differing abilities have different needs and that they should not be discriminated against because they have differing abilities. We are here to share with you the reasons why we feel Bill 107 will further discriminate against people with differing abilities and how it will seriously diminish the ability of someone in Bill's situation to win a judgment in a human rights case.

In order to do this, it is necessary to relate to you one of our many experiences. Bill relies on the meagre income support of \$730 per month provided by the Ontario disability support program, ODSP. Of that monthly amount, \$596 is allocated to his room and board lodging, leaving \$134 per month for all of his other expenses. We ask committee members to think of how quickly and easily \$134 per month is spent.

While Bill is one of the lucky individuals who also receive assistance through the developmental services program, many people with differing abilities do not. Financial hardship is very common to individuals who rely on ODSP for their income. Unfortunately, while Bill does receive other assistance, the developmental services support Bill receives does not currently fund legal services; therefore, legal services must come from whatever is left of his \$134 per month.

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A few years ago, the agency which provides service to Bill, in order to exercise a clause in their service agreement, denied Bill the use of his familiar communication partners on two separate occasions. It was the opinion of the service provider that they were meeting Bill's needs because they were providing Bill with alternate communication partners. However, none of them were conversant with Bill's specialized methods of communication, and none were experienced with Bill's health issues, which seriously affect his ability to communicate at any given time. This effectively left Bill in a very vulnerable situation with no one who truly knew how best to support Bill. To make this a little clearer for members of this committee, it would be like us speaking to you in a language you do not understand without the benefit of an interpreter.

I'd just like to make a little demonstration. I'm going to ask two or three people a question using Bill-speak.

You need to answer us using “yes” or “no.” Do I have volunteers?

The witness signed.

Ms. Balaz: I just asked you if you want to go horse-back riding.

So in this situation, had Bill been asked a question that related to his support, such as, “Are you being abused?” “Are you happy where you live?”—without that knowledge, they could not interpret what Bill had said. That just gives you a little example of what we’re talking about here.

This was just one example of the problems that we were experiencing with the service provider at the time, and we felt very strongly that we needed legal advice and some legal help to get us through this terrible time. So we tried. We contacted a lawyer, but because of the high cost of legal services—specifically, we were quoted \$150 to \$300 per hour—we found that this was not something we could afford. We were given the name of somebody in the legal aid clinic who could help us. Trying to make contact with that person was a nightmare. It took two to three weeks of constant attempts on our part to connect with him. At that time he told us, “I can’t help you. I don’t have the expertise in the disability field.” We contacted ARCH, which is the legal resource for people with disabilities, and we were advised that they would only be able to act as a resource to another attorney. So we were caught in a Catch-22 situation: The lawyer didn’t have the necessary experience or knowledge to assist us, and the disability lawyers did not have the ability to take on our case. We finally connected with another lawyer in Orillia who agreed to work on a pro bono basis to assist us, but then, when it came down to the wire, they became overloaded and could not. We tried every angle we could think of to get adequate legal representation, to no avail. While we consider ourselves fairly adept at navigating the various systems to obtain necessary supports, trying to obtain adequate legal representation seemed an impossibility, yet legal representation is mandated.

Herein lies our belief that Bill 107 creates a major barrier for individuals with differing abilities. Among the many other challenges people with differing abilities face, their financial resources are not great enough to be able to do their own investigation, to be able to gather evidence, identify witnesses and hire experts. Under the new system, in the situation recounted above, had we decided to pursue our belief that Bill’s human rights had been violated and attempted to bring forth a human rights complaint, the service provider would have had well-paid legal representation to counter our complaint, while we had none. Could you see me going to the service provider saying, “I need legal fees to fight you”? It’s not quite feasible.

It is our understanding that the current Human Rights Code gives every discrimination victim who files a timely and non-frivolous complaint the right to have the Human Rights Commission publicly investigate his or her human rights complaint. If a complaint cannot be

resolved between the parties through mediation, the commission must investigate the case.

Section 33 of the code now gives the commission extensive investigatory powers, including the ability to enter businesses, to interview witnesses, to request documents and to seek a search warrant to compel access to relevant documents and other physical evidence.

Under the current code, based on its investigation, the commission is required to decide whether a Human Rights Tribunal hearing is warranted in a case that isn’t voluntarily settled by negotiation. The commission can refer the case to the tribunal for a full hearing on the complaint. At the Human Rights Tribunal hearing, the commission is the public prosecutor. The commission has carriage of the case to prove that the complainant was the victim of discrimination. The commission interviews and calls the witnesses. The commission is supposed to argue that the discrimination took place. The prosecutor therefore effectively represents the complainant’s interest as well as that of the public. If expert witnesses are needed, which is increasingly the case in human rights cases, the commission is responsible for finding appropriate experts, to hire and pay them, and to present their evidence. Expert witnesses can be very expensive.

Under the current code, the complainant has the right also to have a lawyer present at the hearing, to call witnesses to testify and to cross-examine witnesses who testify against the complainant. However, the complainant doesn’t have to do any of this if she or he does not want to.

In contrast, Bill 107 would totally abolish the complainant’s right to have his or her case publicly investigated by the Human Rights Commission. Bill 107 would repeal section 33 of the code. That takes away from the commission its power and duty to investigate human rights complaints. Bill 107 would force all discrimination victims to go directly to the Human Rights Tribunal, without a prior Human Rights Commission public investigation of their human rights complaint.

While the Attorney General has guaranteed that there will be access to legal representation, our experience tells us differently. It is nice that the Attorney General is making this guarantee; however, history is full of promises broken. There must be a legislative and service framework to back up this guarantee, and Bill 107 certainly fails to provide that. We should have been able to access legal aid to assist us, but we were not successful. Presently legal aid attorneys are unable to effectively cope with the number of cases and do not have the expertise in the disability field to provide effective representation. While supports are mandated in many ministries, the reality is that there is not sufficient funding to provide necessary supports to everyone who needs them, and therefore those who will have adequate financial resources will be those who are most successful in obtaining judgments in legal issues.

We would like to quickly mention the Ministry of Community and Social Services and the Ministry of Health and Long-Term Care as examples of the serious underfunding which exists within this government.

Waiting lists for services in both these ministries are long. It took us six long years of hard advocacy to obtain the supports necessary to provide the quality of life Bill now has. Finding their way through existing bureaucratic red tape costs individuals and their families dearly, emotionally as well as physically, clearly depleting their time and energy, which would be better spent supporting their loved ones. It is clear through our experience that those people who can best navigate the system usually obtain the necessary services. Yet these ministries are mandated to provide services equally to all. What about those people who are differently abled who are not as capable of navigating the system? Will a new human rights support centre be any different? The proposed changes would exponentially increase institutional barriers, particularly for the differently abled.

A Toronto Star June 5, 2006, editorial substantiates our belief, as it pointed out some of Bill 107's serious flaws in this regard. It stated in part:

"But Bryant still needs to fill in some crucial details.

"First, he must assure Ontarians that all legitimate claims would have a fair hearing regardless of the financial resources of the complainant by making concrete provisions for publicly funded legal support.

"Second, he must show he has budgeted enough money for the staff and resources required to make the new system really work.

"Under the current system, the commission shepherds complaints through the process. That means people with little money do not have to hire a lawyer because they can rely on the expertise of commission staff.

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"Under the proposed system, a new human rights legal support centre would offer 'full legal support,' including representation at hearings, to people who file human rights complaints at the tribunal. Bryant says there would be no means test. He also says services would be delivered by lawyers. But the catch is that he has not worked out yet whether they would work at legal clinics, in the private sector or for government.

"This uncertainty around the legal support centre is troubling. The proposed legislation does not explicitly provide for such a centre, let alone spell out what services it would offer. This is too important to leave until later. It must be settled as soon as possible. Ontarians must have confidence the new system will be accessible to all, regardless of their income.

"Vagueness about the budget only adds to the uncertainty. The government now spends \$13 million a year on the human rights system. It has pledged up to \$2 million extra for the transition period. But it has yet to spell out how it will divide the cash between the revamped tribunal and commission, and the new legal support centre. Critics fear there will not be enough money or staff to help people with claims navigate the system.

"Vulnerable people should not have to take it on faith that Queen's Park will protect their interests. That's why Bryant must address these uncertainties as soon as possible so that his well-intentioned attempt to improve a

broken-down system will have the confidence of all who use it."

Additionally, Bill 107 permits the creation of serious new financial barriers to access to justice for discrimination victims because, for the first time, it permits a human rights complainant to be charged tribunal user fees and to be ordered to pay the respondent's legal costs.

The current code doesn't authorize the commission or tribunal to charge discrimination victims a user fee for filing a human rights complaint or for having a hearing before the Human Rights Tribunal. Moreover, the Human Rights Tribunal is not empowered to order the complainant to pay the respondent's legal costs, even if the tribunal decides that the respondent didn't discriminate against the complainant.

The complainant's current freedom from exposure to user fees and from being ordered to pay the respondent's legal costs at the tribunal is an extremely important element of an accessible human rights system. Many, if not most, discrimination victims are low- or middle-income earners. It is important for committee members to understand that the majority of Ontarians do not earn the salaries of MPPs. Most of us are middle- to low-income earners. We don't work on Bay Street and we don't attend \$500-a-plate political fundraisers. We are the caregivers, the support workers and the service providers. We are women, youth, seniors, new Canadians and all the other faces of Ontario. I myself would certainly be considered a middle- to low-income earner and would be extremely hard-pressed to manage costs for my own defence if necessary. Bill and I are two individuals in our riding affected by this, but we are two of many thousands more who will be directly impacted in a negative and undemocratic manner by Bill 107.

Legal costs: Under the current code, cost orders cannot be made against a complainant whose case is lost at the Human Rights Tribunal. In addition, under the current code, if a respondent goes to court, either on appeal or via a judicial review application, it will name the commission as a party to the court proceeding. If the commission defends the appeal or judicial review application and is unsuccessful, it is the publicly funded Human Rights Commission, not the complainant, whom the court typically orders to pay the respondent's court legal costs. Those court legal costs can amount to thousands and even tens of thousands of dollars.

Bill 107 gives the tribunal sweeping power to make procedural rules. Under this power, the tribunal could make rules that let the tribunal order the complainant to pay the respondent's legal costs if the respondent wins the case at the tribunal.

Under Bill 107, the Human Rights Commission will no longer be a party to many, if not most, tribunal proceedings. Under Bill 107, if the complainant loses his or her case at the tribunal, it will be only the complainant, and not the commission, who could be exposed to pay the respondent's legal costs. If the complainant wins at the tribunal but the respondent successfully challenges this victory in court, again it will be the complainant, and not

the commission, who will be exposed to pay the respondent's court legal costs.

In Bill's case, he has \$134 per month after paying his room and board. If Bill were to be placed in a situation where he was made responsible for a respondent's cost of, let's say, \$10,000, it would take him six years and three months to repay that using his entire \$134 per month, leaving him no spending money at all. Would the committee members subject themselves to such hardship?

This amounts to punitive charges for what is now a public service and, as a result, this financial risk could deter many discrimination victims who have a good case from filing a human rights complaint. They will have no assurance in advance that they won't have to pay thousands of dollars in legal costs if the tribunal isn't convinced that the respondent discriminated against them.

User fees: Under the current system, a complainant pays no user fees to access the human rights enforcement system. For the first time, Bill 107 would permit the tribunal to charge discrimination victims and others user fees. This too will be a potentially serious deterrent to discrimination victims enforcing their human rights, especially for the poor. These twin financial deterrents fly in the face of the government's stated objective for Bill 107, that being to increase access to justice for discrimination victims.

The reality is that people who are differently abled such as Bill, who depend on ODSP, and the many others who live in poverty or those of low and middle income will never be able to afford the same legal representation as the respondents. This creates an unbalanced system, resulting in hopelessness for victims of discrimination. It undermines the very cornerstone of equality that our democratic system is supposed to embody. How will discrimination ever end?

In conclusion, Bill 107 will effectively create additional barriers for people of differing abilities. While we commend the government for trying to fix a backlogged system, Bill 107 is a glaring example of the results of developing government policy, hastily constructed, without the input of the individuals it is meant to protect at all stages of the process. It is clear that given the stated opposition to Bill 107 by both opposition parties, the government has also failed to take into consideration the constructive criticism of elected representatives whom the people of Ontario chose to balance the government agenda.

This is the reason we have come forth today: to inform this committee as to how Bill 107 will affect our chances of ever being able to successfully bring forth a human rights complaint so as to effectively right a wrong perpetrated against a person because of differing ability. For this reason, we wish to publicly announce that we have read the draft submission prepared by the Accessibility for Ontarians with Disabilities Act Alliance and fully support their recommended amendments to Bill 107 to the standing committee. The address is in our brief. What we ask is that Bill 107 be amended to ensure that

all people, regardless of their financial situation, are afforded the right to have their human rights complaint publicly investigated by the Human Rights Commission, as is currently the process.

Bill and I wish to thank you for taking the time to listen today, and we implore you to seriously consider how the proposed changes to the Human Rights Code act would affect you if you were poor and/or differently abled. Please put yourself in our situation and ask yourself how you would manage should the proposed changes be implemented without any amendments. Would the committee members truly feel comfortable investigating their own human rights issue complaint? Please listen to the voices of the people who are most likely to be a complainant in a human rights issue. Let us all work together to stop discrimination of any kind.

The Chair: Thank you very much. There's no time remaining.

Mr. Kormos: May I have unanimous consent to sit for five minutes?

The Chair: Do we have unanimous consent? Another two minutes each? Agreed? Okay. We'll start with the government side.

Ms. Matthews: Thank you very much for coming today. I know what strong advocates both of you are, and I really want it appreciated. I know it's a big chore to come today, to prepare the presentation, and it's very much appreciated. Your comments will most definitely be taken into consideration.

I want to assure you about a couple of things. One is that the investigation process will continue; it will just be streamlined. So people will still have support in their investigation. It will be streamlined: It won't be two separate investigations, it'll be one, so that will actually be more efficient. It will be better for complainants and it will take less time to get resolution. It's important for us that people get speedy justice.

The other thing is that I raised the question in the House with regards to legal support and was assured very, very clearly by the Attorney General that there will be an amendment that will ensure that people will get the support they need to achieve justice. Your concern has been heard and assurances have been given. So be patient. This does take time, and we will address your concerns. Thank you very, very much for being here.

Mrs. Elliott: I share your concerns with respect to the legal supports: to make sure that people are heard and that their complaints are brought forward as best they can with the representation that people need when they need it. I also appreciate your specific perspective on the financial issues that people are faced with, from a very real perspective, and I think that puts things in a really different light for those of us here at the committee. I know it has probably been very difficult for you to be here today, but we certainly appreciate it. Thank you both very much.

Mr. Kormos: Mr. Hiltz and Ms. Balaz, you seem to have a far clearer comprehension of the public interest role that's served by the commission than, quite frankly,

some of the members of the committee appear to have. Let's understand, the reason why the new legislation awards costs is because you don't have a commission vetting cases, deciding which ones have a greater likelihood of succeeding as compared to those that don't. In the existing system, the commission has to be very careful about which cases it takes to the tribunal because it can be the victim of an award of costs. That means there's a greater emphasis on resolution before the tribunal stage. When you have direct access, you've got to have a system of costs because there's no other way to deter people from pursuing cases that they know have little likelihood of succeeding—and you're right, that's a disincentive. It turns it into a crapshoot.

The salary up at Queen's Park is in the top 5%—we're at the lower end of the top 5%, but we're in the top 5% of income earners in the country. Should they suffer discrimination, most of the folks there can probably deal with it pretty effectively in their own right.

My office has dealt with the concerns of persons who are non-verbal who are victims of abuse and sexual assault. They're targeted, because the criminal justice system can't accommodate people who are non-verbal

and who need interpreters. Crown attorneys are scared out of their wits by it. Police don't know what to do, even the best-intentioned police. Surely—and I'm not saying we should be proud of how the criminal justice system has yet to understand the needs of these victims so that they get justice—in a Human Rights Commission process, we can ensure that built into the system are those elements of the commission that do the very things that Ms. Balaz and Mr. Hiltz cry out for.

The clause-by-clause consideration is not going to be a tea party. We're not friends. We're collegial, but we're not friends. The government has a majority. They will call the shots. The opposition caucuses are going to do their darnedest to get amendments passed, but it's going to be several mean, tough days of clause-by-clause consideration, because the government holds all of the cards.

The Chair: Thank you, Mr. Kormos. Thank you, committee members. Special thanks to the sign language interpreters for coming today. This committee stands adjourned until 9 a.m. on August 9, tomorrow morning, in Ottawa.

The committee adjourned at 1723.

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Standing committee on justice policy

Human Rights Code
Amendment Act, 2006

Comité permanent de la justice

Loi de 2006 modifiant le Code
des droits de la personne

Chair: Vic Dhillon
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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
JUSTICE POLICYCOMITÉ PERMANENT
DE LA JUSTICE

Wednesday 9 August 2006

Mercredi 9 août 2006

The committee met at 0904 in the Delta Ottawa Hotel and Suites, Ottawa.

HUMAN RIGHTS CODE
AMENDMENT ACT, 2006LOI DE 2006 MODIFIANT LE CODE
DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

The Chair (Mr. Vic Dhillon): Good morning and welcome to this meeting of the standing committee on justice policy. The order of business is Bill 107, An Act to amend the Human Rights Code. This is our second day of public hearings, from Ottawa today. We will be meeting in Thunder Bay tomorrow. Public hearings will be held in Toronto in the fall.

For your information, to make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services are being provided each day. As well, two personal support attendants are present in the room to provide assistance to anyone requiring it. To facilitate the quality of sign language interpretation and the flow of communications, members and witnesses are asked to remember to speak in a measured and clear manner. I may interrupt you and ask you to slow down if we find you're speaking too quickly.

Thank you very much.

OTTAWA AND DISTRICT
LABOUR COUNCIL

The Chair: The first presenters are from the Ottawa and District Labour Council. Can you just state your name before you start for the record, please?

Mr. Sean McKenny: Good morning. My name is Sean McKenny, and I'm president of the Ottawa and District Labour Council. The labour council is comprised of 90 affiliated local unions representing approximately 44,000 working men and women in Ottawa. Those unions cover all sectors of our region. We're also one of the oldest labour councils in the country, having been first established here in 1872.

I don't think I need to highlight or frame the valued work of the Ottawa labour council or labour councils in general. Suffice it to say that we do some pretty good

stuff here and have a fairly positive working relationship with our local elected municipal officials and the community in general.

I want to start by thanking the committee. I certainly appreciate the opportunity to present before you here today. I also want to thank the Ontario Federation of Labour. They've done an incredible amount of work surrounding Bill 107 and have provided us with the results of that work.

We can probably all agree that labour has played a significant role for over a hundred years with regard to human rights, and I think it's fair to state, factually, that our role has been a leading one. Many, many unions, federations of labour across this country and the Canadian Labour Congress have long had and continue to have human rights committees within their own internal structures, committees focused on and actively involved with human rights for their membership, for working people outside their membership and for those within the broader community in general.

We've been proactive throughout our history in respect to human rights, and labour's tags such as "Workers' Rights are Human Rights" solidify our role, be it past, present or future. So when labour talks about human rights, it does so with passion, it does so with authority, it does so with commitment, it does so with expertise, and yet through all of that we remain humble for the most part.

We believe that Bill 107, An Act to amend the Human Rights Code, will substantially weaken the Ontario Human Rights Commission and have a very negative impact on a number of groups in securing even the most basic of human rights as we know them today. What was incredibly telling for me as I prepared for this presentation was coming across a number of organizations and individuals who were not in favour whatsoever of the bill.

The system needs to be fixed, unquestionably. It's slow. It's backlogged. It's slow and it's backlogged because it has been underfunded for years. In 2004-05, the commission's budget was \$12.5 million. In 1995-96, the commission's budget was \$11.3 million. There needs to be more money put into the commission so that the system is provided the much-needed resources to be able to carry out its mandate.

There is no statutory guarantee within Bill 107 of free legal representation. Clearly, this will cause many Ontarians to represent themselves against well-paid counsel,

or if in fact they can afford to hire a lawyer, it's doubtful that they will have the same level of resources as the respondent. The bill hands off the advantage, right from the get-go, directly to the respondent. This in itself seems incredibly bizarre when you're talking human rights. The legislation must state clearly that all costs will be covered. The burden of financial responsibility should not be placed on the complainant.

Last week I received a call from one of the mayoral candidates in the upcoming municipal election in Ottawa. He asked me if I had the time to speak with an individual who had phoned over to his campaign office a few times over the previous week and a half. The calls and a couple of e-mails were about employment insurance or work, and this individual was apparently having some difficulty trying to apply, or something to that effect. Anyway, the request of me was that I meet with the individual. So I agreed.

0910

The meeting was arranged a few days later over at the labour council. Nice guy, Anthony; real nice guy. Heck of a story too.

I've been involved actively in the rights of workers for about 25 of my 45 years. I've seen quite a bit, as I'm sure you all have with the number of things that you're involved with and the things that you do. This one, Anthony—these pop up every so often—this one hit.

I met with Anthony at the labour council on August 3. Anthony is a 48-year-old who served in the army on behalf of his country for about five years, up until the early 1990s. In 1993, Anthony secured employment outside the military with a well-known company in the city of Ottawa. He liked the job, and was pretty good at it.

When 1997 rolls around, Anthony develops MS. I personally can't imagine what it would have been like for Anthony in 1997 to hear from his doctor that in fact he had MS. There you are one day, carrying a 60-pound backpack over 100 kilometres of some of the dirtiest terrain in a 48-hour period, as he did back in the late 1980s, and the next thing you know, you have this incredible presence of physical limitation.

I should point out that Anthony's job was not unionized.

Anthony notified his employer of his MS back in 1997. His employer's response was that Anthony would be better off going on disability. Not unlike his soldier days, Anthony remained a fighter. He refused. I should point out that the kind of work that Anthony did, and does, requires very little physical mobility. It's not an occupation where he's required to wear a tool belt and a hard hat.

Anthony told me that the employer had been trying to have him go on some kind of disability ever since 1997; this, an employer he's had for 13 years. Anthony has fought that battle and continues to fight that battle, again, not unlike the fighter that he once was.

July 13, 2006, rolls around and Anthony's MS flares up. His wife calls his employer and says that Anthony can't make it in that day. July 14, 2006: no change.

Anthony's wife again calls his employer and explains that Anthony really, really wants to report to work but his MS flare-up prevents him from doing that for the second day.

July 17, a Monday: Anthony is feeling a little better. He reports to work and everything is fine. July 18, July 19, July 20: Anthony is at work, giving it his all. July 21, a Friday: Anthony's supervisor approaches him and tells him that there are some documents that he needs to sign at the central office. Anthony inquires, "What documents?" The supervisor responds, "Oh, just some health and safety documents, that's all. Just some health and safety documents that you need to sign." The supervisor takes Anthony to the central office, where, according to Anthony, he's fired.

I'm going to read to you a few e-mails that Anthony has sent to me since our initial meeting a week ago. Bear with me, because I've tried to not expose the employer. The labour council will have a way to do that over time.

This one is dated August 4 and it's to me:

"Sir,

"As I told you yesterday, my employer wants me to go on disability. They have done everything they can to try and make me quit.

"As I told you, my wife suffers from depression and anxiety attacks, and when her only living sister was dying of cancer, she would come pick me up. It was during a heat wave. While waiting for me in our car, she would be crying and vomiting. So I asked, could I swap jobs with a co-worker—and he had no problem with it—so I would get out a bit earlier. But the employer said no, laughed at me, and said they didn't care what was wrong with my wife.

"I slipped on a wet floor at 8 a.m. I broke two of the three bones in my elbow. I did my full shift, and only at 7 p.m. did I go to the hospital and I only had one day off.

"Sir, like I told you, even though my employer wants me gone, I will not quit, and I do not think while I can do a job I should have to go on disability. Sir, I think"—So-and-so at the workplace—"has gone on a holiday and a Mr. ... is the man in charge.

"Sir, I don't think it is wrong to want to work. I have not even been able to sign on because my doctor has to sign a form and post it for me. I'm sorry for having to bother you, but I really do need help. Sorry for troubling you.

"Anthony."

Next e-mail, same day, just a couple of hours later:

"Sir,

"I hope you will help me. I really need it. Yesterday when I saw you I was getting spasms in my left leg. They got worse and carried on until 11 p.m. That was because of the MS attack I got on the 11th. But now it is over and my left leg is much better. I do not even have to use my cane as much. Thank you for driving me home last night. When I am not at my computer, my phone number is... I will not bother you again. As I said, I have gone through both harassment and discrimination since telling my employer I have got MS. It is getting to my wife, who

suffers. I promise you I will not annoy you again, but I will answer any questions that you have.

"Thank you,

"Anthony."

Polite guy, man.

Another one:

"My wife has just told me I have been ill with MS the year after the ice storm and not 1996, as I thought. My family doctor has said, 'Sorry about having the wrong date.'

"Yours sincerely,

"Anthony."

The next e-mail he sent, dated August 7:

"Mr. McKenny,

"This is just to say thank you for all you have done for me. I am sorry I got the date I got MS wrong. My wife told me it was the year after the ice storm, but this I swear on the holy Bible, everything I told you was the truth. I know the employer will lie about me. They have had enough time to make a story up, but as you said, you've been doing your job long enough to know who is lying. Again, I can never thank you enough for being good enough to help me, which is why I will not lie to you about the harassment and discrimination I have suffered, which I know it's not only me who has gone through."

Another e-mail from Anthony:

"Mr. McKenny,

"Sir, just to wish you luck at the meeting"—I had a meeting scheduled with the employer yesterday; and this is dated August 8—"and to thank you. But, sir, another reason they dislike me is, I was working a public holiday building workstations and moving furniture at the building. I worked from 6 a.m. to 11 p.m. and when it came to my getting paid, I saw my pay slip. I was only paid for eight hours time-and-a-half. When I went to the pay office I was told it was because my normal work hours was eight hours, I was only entitled to eight hours time-and-a-half. I went back to the building, saw one of the managers I worked for and asked him how much he had charged for my services that day that I worked at the building. He told me he'd get back to me the next day. The next day he phoned me and said they had charged him time-and-a-half for the full hours. I had worked 6 a.m. to 11 p.m. I told him they had only paid for eight hours. So I said, where had the money gone? He phoned the company and asked about the missing money. He was upset and told them not to pull that trick again. My employers were very upset at me."

Next e-mail:

"Thank you for phoning me in time to meet me tomorrow. I will be there, sir." That's today, by the way, 11 o'clock this morning; I'm meeting with Anthony again. "I bet they made me look bad, but honest, sir, I swear, all I ever wanted was to work for as long as I could and bother no one. Anyway, as I said, I will be there for 11 a.m. Again, thank you for everything you have done.

"Thank you,

"Anthony."

You see an individual like Anthony not being helped in any way through Bill 107. Clearly, through his e-mails, he's limited in his ability to try and help himself, and this is not unlike so many other instances of new Canadians in those other areas, where our most vulnerable are exposed to these kinds of tactics by an employer or others. The proposed creation of a new human rights legal support centre will do little, if anything, to help Anthony. Give the guy all the information in the world, he can't defend himself. He's got no money to defend himself.

Again, the burden of financial responsibility should not be placed on the complainant. Workers must be able to use every means possible to challenge employers when they violate human rights. In addition, the labour council is not opposed to complainants having the option to take their complaint directly to the tribunal, as they do in the province of Quebec. However, this choice should not be at the expense of dismantling the Human Rights Commission and its capacity to investigate, mediate and resolve complaints.

In closing, I think you're starting to see, and you'll continue to see, that everyone is in agreement that there need to be changes to our human rights system. The problem lies as to where those changes need to occur. We believe Bill 107, An Act to amend the Ontario Human Rights Code, does very little to move our system forward. Thank you.

0920

The Chair: Thank you very much. We have about five minutes in total, so a little less than two minutes each. We'll begin with the official opposition.

Mrs. Christine Elliott (Whitby-Ajax): Thank you very much for your presentation. You really put it in human terms for us. I think it's important to note that there needs to be representation for people who are vulnerable because they really can't speak for themselves. They need to have assistance. You said that you weren't opposed to the idea of direct access. Would you be in favour of complainants having a choice whether to go directly to the tribunal or to proceed through the commission?

Mr. McKenny: I've read a number of the documents in regard to the bill and I've read that particular part in regard to the choice between both a number of times. Yes, we would certainly be in favour of the individual having the choice between either. But they have to have that choice. It should be and has to be, must be, up to them.

Mrs. Elliott: Thank you very much.

Mr. Peter Kormos (Niagara Centre): Thank you, Brother. I appreciate you coming here and being the first submission in Ottawa. Just fascinating, the data from the year ending 2006, that 57% of all complaints to the Human Rights Commission are resolved at the commission level by way of settlement, be they mediated settlements or settlements arrived at by mutual agreement of the parties. That seems to be a pretty valuable role. Why would the government want to eliminate that function?

Mr. McKenny: Hey, you're asking me. I have no idea. Those are the kinds of questions that we as a labour council have asked as well. If something seems to be working to a degree—and maybe it's not perfect; again, we've stated that, that it does have to be fixed. It needs to be fixed by the introduction of more dollars towards making it better, because clearly that's not happened over the last number of years. But again, we need to improve on that 50%. To do that is by increasing the money in respect to the commission.

Mr. Kormos: Thank you, Brother.

Mr. David Zimmer (Willowdale): I just want to point out that subsequent to the bill being introduced, in response to a question in the Legislature, the Attorney General did commit to introducing an amendment which would ensure that everyone before the tribunal would, in fact, have their own independent legal counsel. So your point on the representation has been well taken and addressed by the Attorney General in the Legislature. He's made that public commitment. Thank you very much for your submission on that point.

Mr. McKenny: You're welcome. I guess that's like any government. A lot of governments make commitments. Clearly the intent with the introduction of Bill 107 was to try and make the system better, but it's failed. Again, as labour, we're skeptical in regard to pretty much a lot that this current government says, especially when it comes to workers, especially when it comes to human rights and those kinds of issues. But I appreciate your comments. Thank you.

The Chair: Thank you very much for your presentation.

MULTIPLE SCLEROSIS SOCIETY OF CANADA

The Chair: The next presentation is from the Multiple Sclerosis Society of Canada. Good morning. If you can just identify yourself before you begin.

Ms. Yassemin Cohanin: Honourable Chair, members of the committee, ladies and gentleman, thank you for the opportunity to present the views of the Multiple Sclerosis Society of Canada, Ontario division, on the proposed changes to the Ontario human rights system.

My name is Yassemin Cohanin. I have secondary progressive MS. I have to confess, I'm feeling a bit like David facing Goliath by appearing before this committee. Perhaps that feeling of vulnerability typifies what many of us—people with disabilities—are feeling about the changes that Bill 107 might bring. Will the changes put us in a weakened position when we try to use the altered human rights system? Without the able support of the Ontario Human Rights Commission, how will we be able to successfully bring human rights complaints against large corporations and organizations? The changes proposed by the government will have an impact on people just like me. That is why I have come here today on behalf of the MS Society of Canada, Ontario division.

The MS Society of Canada has serious concerns about the changes proposed in Bill 107. In our view, if the bill is adopted as currently drafted, the result will be a weaker and less accessible human rights system. In my submission today, I will focus on some key points. In addition, as a member of the AODA Alliance, the MS Society of Canada supports the position on Bill 107 which has been taken by the alliance.

Our main concern is that reducing the powers and role of the Human Rights Commission in the enforcement of the Human Rights Code will further disadvantage Ontarians who experience discrimination. In our view, providing direct access to the Ontario Human Rights Tribunal without also providing legal assistance is a step backwards.

As others have noted, this represents a privatization of human rights protection and removes the commission from most discrimination cases that aren't considered "systemic," a term that is not defined clearly. As most of you would know, most human rights cases aren't systemic; they involve individuals, often people who are disabled, trying to obtain the rights enjoyed by other Ontarians in the face of concerted opposition from employers, landlords, service providers or government agencies.

Right now, if a person files a complaint of discrimination with the commission, it investigates that complaint as long as it is within its jurisdiction, not frivolous or vexatious or brought in bad faith and is not sent to another appropriate external complaint board. If the commission cannot mediate a settlement of the complaint between the parties, and decides that the case warrants a hearing before the Ontario Human Rights Tribunal, one of the commission's lawyers presents the case before the tribunal. In other words, people who experience discrimination don't have to be able to afford a lawyer or qualify for legal aid to ensure that a lawyer with specialized knowledge in human rights presents their case to the tribunal.

Bill 107 takes away this role. A person who is discriminated against will have to get their own lawyer to present the case or they will be expected to present the case themselves. Although the commission retains the power to intervene before the tribunal in certain cases that are designated "systemic" if it chooses to, the implication is that other complainants will have to fight their own cases. This may result in two-tier justice and is a step in the wrong direction. Bill 107 proposes to establish within the commission two new secretariats, one focusing on disability rights and one on anti-racism. Their roles are not defined, so I am unable to comment on their possible effectiveness or, more importantly, their possible ineffectiveness.

People with disabilities will rarely be able to afford the costs of privately investigating their own case, and they certainly won't have the public investigation powers that the OHRC now has. As this committee is no doubt well aware, 25% of Ontarians who are disabled are unemployed, according to Stats Canada. In the case of

people with MS, up to 80% are unemployed just a decade or so following diagnosis.

We understand that the Attorney General plans to have legal counsel available through a legal support centre. However, section 46.1 merely states, "The minister may enter into agreements ... for the purposes of providing legal service and such other services ... to a proceeding before the tribunal." There are no details and no guarantee this will happen.

What does this really mean? Does it mean all complainants to the tribunal will be guaranteed publicly paid lawyers who will assist them with what can be complex legal procedures; or does it mean that only at some levels of proceedings complainants will have legal counsel; or will only complainants who qualify under stringent legal aid requirements have legal counsel? We hope that this committee will ensure that adequate legal support is guaranteed and funded. There must be equal access to justice.

0930

The MS Society is also troubled by the proposed change that would allow the tribunal to charge user fees to people who bring human rights complaints forward. They could also be liable for the legal costs of the person or company charged with discrimination—and you can be certain the legal costs of a large company that has enlisted the support of a battery of lawyers will be substantial.

Another concern is whether legal representation for people who have human rights complaints will be adequately funded under the proposed legislation. Unlike the current system in which the Ontario Human Rights Commission is legally responsible for representing complainants to the Human Rights Tribunal, funding for the new system could be at the whim of any future government. The human rights legal support centre is not entrenched in the legislation and funding for it could easily disappear. Funding for the Ontario human rights system has never been adequate, and the proposed changes might jeopardize what currently exists.

It's surprising that the proposed changes to the Ontario human rights system appear to run contrary to the basic understanding of how the Accessibility for Ontarians with Disabilities Act, the AODA, will be enforced. When the new act was being debated, many groups called for a new, independent enforcement agency to be established to enforce the removal and prevention of barriers to access. The government took the position that no such new independent agency was needed because Ontario already had the commission, with all its powers to receive, investigate and prosecute human rights complaints. The proposed changes may seriously impact AODA enforcement, and we urge this committee to look carefully into that aspect of the legislation.

As you are probably aware, just over 54% of the human rights cases filed each year are cases of disability discrimination. Briefly, I would like to present for your consideration some amendments that the MS Society believes would greatly improve Bill 107:

—Ensure that the Human Rights Commission maintain a true investigative and support function for human rights complainants by providing meaningful investigative and enforcement powers to the disability rights and anti-racism secretariats.

—Guarantee all human rights complainants the right to publicly funded legal representation at all tribunal proceedings.

—Ensure that no human rights complainant is charged user fees or made liable for the legal fees of those who have been charged with discrimination.

—Ensure Bill 107 does not breach the government's commitment for enforcement of the Accessibility for Ontarians with Disabilities Act, the AODA. If the Ontario Human Rights Commission's current powers are not maintained, an effective independent enforcement agency under the AODA should be established.

In conclusion, it's important that Ontario retains a publicly funded, independent enforcement body with a formal individual complaints process and mandatory investigation duties. Without significant amendments, Bill 107 may result in a human rights system in Ontario that is very seriously flawed and that will discriminate against people with disabilities and others who are disadvantaged.

At the beginning, I mentioned feeling like David as he faced Goliath. However, let's all remember that David, in the end, prevailed. I urge committee members to help all of us Davids who are concerned about many aspects of Bill 107 to also prevail. Thank you very much for your time and attention.

The Chair: Thank you. We'll start with Mr. Kormos. There's a little bit over three minutes each.

Mr. Kormos: Thank you, Ms. Cohan. I appreciate your participation as well as everyone else's. Just a couple of things—again, this concept of a legal support centre. Many of us are familiar with the Office of the Worker Adviser, which provides advocacy for injured workers—grossly underfunded, understaffed, under-resourced. Never mind the waiting list at the WCB, the waiting list to get into the Office of the Worker Adviser is months, sometimes years, depending on what part of the province you're in. So with all due respect to my colleagues from the government, I have absolutely no confidence in this government's ability or interest in setting up an adequately resourced and staffed legal support centre—costs. Let's be perfectly clear. There are some lawyers on this committee who have practised in civil litigation who know—because that's what's happening. The tribunal is being turned into yet another style of court: You pay your fees, you file your claim. Inevitably, because the tribunal is going to have the power to set its own process, they're going to introduce concepts like discovery. They're going to have to, because there are no investigative powers, right? So they're going to have to have discoveries, costs of transcripts. And then the risk of costs: tens or hundreds of thousands of dollars. Experienced counsel can tell you that it's not uncommon at all.

Talk about creating a chill in an area where there's such a strong public interest.

I understand costs in the civil justice system, but here this is a public interest matter. Discrimination against you or you or you is as important to me and the rest of the 11 million, 12 million Ontarians as it is to you. I share with you an incredible fear for the chilling effect that the risk of cost is going to have in an area where we should be encouraging open address of all areas of discrimination if we're ever going to overcome it, if we're ever going to create a—Ms. Leclair spoke with us earlier about the goal of a truly barrier-free society. If we're ever going to get there, we can't be using a private courtroom model.

So I appreciate your comments. I know there are people who disagree with you and me, including these Liberals, but we're all Davids, aren't we?

Thank you kindly.

The Chair: Thank you. Mr. Berardinetti.

Mr. Lorenzo Berardinetti (Scarborough Southwest): Thank you, Ms. Cohanin, for your presentation today. We've taken your points into consideration. We do agree at least on one thing: The system needs to be changed. It's a question of how we're going to change it.

I just wanted to thank you for your presentation and ask you a quick question. I see in your presentation that you represent the MS Society of Canada, Ontario division. Have you had a chance to speak with the national division, or have you worked with the national division at all in coordinating an approach in critiquing or at least looking at the legislation? Have they been involved at all in this?

Ms. Cohanin: Yes, they've been involved. I recently have joined the Ontario division, so I'm getting groomed and interested in what their impact is. They have presented to the Ontario division. I'm just supporting Ontario and bringing forward what their concerns are.

Mr. Berardinetti: Okay. Thank you very much.

The Chair: Mrs. Elliott.

Mrs. Elliott: Thank you again, Ms. Cohanin, for your presentation; it was really excellent. Let me say at the outset that I share many of your concerns with respect to the commission, making sure that it retains the ability to investigate and to bring forward complaints, to assist complainants in bringing their complaints forward. Secondly, with respect to the so-called legal support centre, it's true that it's not mentioned in the legislation. It has been vaguely mentioned by the Attorney General in the Legislature. I think you probably heard the comments that were made with respect to the previous speaker. But it would seem to me that if it is as significant as it's said it's meant to be, it should be enshrined in the legislation, it should be guaranteed so it's not at the whim of government spending. Particularly when we look at the justice sector spending, which is flatlined for the next few years, one wonders how that's even going to be possible.

I thank you for bringing those concerns forward.

The Chair: Thank you very much for your presentation.

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LORRAINE PAQUIN JANE SCHARF

The Chair: Next, we have Lorraine Paquin. Good morning. You have 20 minutes. You may begin any time.

Ms. Lorraine Paquin: Good morning. My name is Lorraine Paquin. I brought along Jane Scharf, who has helped me out a lot with my human rights complaint. There may be some questions you might want to ask at the end, and Jane will be able to help in answering them. I'm here today to let you know that my daughter Nicole—she's at the back—has Down's syndrome. She is well behaved and is high-functioning due to extensive preschool stimulation.

In December 2000, I filed my first human rights complaint with the commission on behalf of my daughter Nicole. Our complaint was with regard to Nicole being denied supports and services in French immersion at our home school in Greely, Ontario. Over five years later, in April 2006, our complaint was dismissed for insufficient evidence. My daughter will continue to face discrimination unless the Human Rights Commission starts standing up for the people they have a duty to protect and stops hiding behind the bureaucracies that discriminate.

Just to give you a few examples of how my daughter has been treated, Nicole did not receive supports and services in junior kindergarten. Although her progress was held back, Nicole nevertheless benefited from a regular classroom. This is something the school board had not anticipated. The school board also locked Nicole out of school in senior kindergarten for one month. After considerable protest, she was admitted, but again without supports and services. It's very serious.

Then in grade 1 the school board used an educational assistant to segregate her from her class and the curriculum so she would not benefit. This involved refusing to allow her access to any curriculum the other children were receiving, and they even refused to let her participate in drama class. Instead, they would have Nicole colour and play by herself. The school board locked her out of school with her sister, Jullian, who's at the back as well, at the end of grade 1 because I filed a human rights complaint, a severe reprisal which was not addressed by the Human Rights Commission.

When Nicole repeated grade 1 at another school, the same school board, Nicole was injured in what could have been construed as assault, which resulted in one entire school year lost. There were many other incidents of poor treatment and inadequate services, too extensive to list here.

I'm going to share with you what I feel the problem is. The main problem with the Ontario Human Rights Commission is that they have unfettered discretion during the entire process. For example, testimonial evidence given to the OHRC from bureaucracies that have allegedly discriminated may or may not be given to the complainant. Another example of unfettered discretion is in the

OHRC's ability to determine what appropriate services are. The OHRC have demonstrated to me their discretion to determine what are appropriate accommodations for the disabled, even though their assessments are not consistent with the medical assessments on file which clearly stipulate what the appropriate accommodations should be.

Another point: The OHRC do not have clearly stated regulations and/or guidelines to follow during the entire process, including reprisal. The OHRC are not generating their decisions in accordance with the rules of natural justice.

The result: This is what happens to us. As a result of the OHRC's unfettered discretion and unreasonable decisions, the boards of education have become untouchable and cannot be made to adhere to the Human Rights Code or the charter in relation to equality rights. The complainants—that's me—are wasting their money on lawyer bills. The proof is that it has been over 15 years since an educational complaint has been adjudicated in favour of the complainant. That's serious. Don't tell me that over the span of this many years there's not one person who has a legitimate complaint that their rights have been violated. In my opinion, one day without supports or services in the life of a disabled child is discriminatory.

The solution: I feel the solution for the Human Rights Commission is that the OHRC needs regulations and/or guidelines which rest on the principles of natural justice when processing complaints in order to prevent the OHRC from issuing biased decisions.

My conclusion to this: I just want people to know that there is no point to filing a human rights complaint the way the process stands today. I thought I could get justice and that the OHRC would be there for my disabled daughter when I needed help. I filed another complaint last year, in 2005. If only I knew then what I know now, I would never have filed another human rights complaint. I hope that justice will be rendered in the end and that positive changes will be made as a result of today.

Thank you for listening. Today was my day. I'm happy to be here, and hopefully it makes a difference.

The Chair: Thank you very much. We'll begin with the government side—a little bit over four minutes each.

Mrs. Maria Van Bommel (Lambton-Kent-Middlesex): I want to thank you very much for your presentation. I certainly hear a struggle that you have gone through. I think government and all parties recognize that there need to be changes made, and that's why we're proceeding in the direction that we are. But I would like to hear from you a little bit more about what you think we need to do for the whole process. As it stands now, we have the commission and the tribunal. People go through the commission and then they have to go through the tribunal, should they be successful at the commission level. It's a long, drawn-out process, as we have it today. For daughters like Nicole, by the time we get through the process they're already that much further in. Can you tell me more about the kinds of things that we need to do?

Ms. Jane Scharf: I think it's not so much a problem with the procedural set-up as the guidelines, the principles guiding the actions of the commission. If the investigation process were appropriate, it would eliminate the need and it would stop the ongoing discrimination and the need for subsequent complaints. If school boards knew that if they violate rights it's going to result in an investigation that yields accountability, then you're going to reduce your need dramatically, and then you are able to process the other things properly. In a perfect world you can have greyness, the board truly thinks this is better, and those kinds of things. Those are the kinds of things that should be going to the tribunal, not out and out locking the door and not letting the child in or other outrageous types of discrimination. That should not occur; there should not be enough buffer in the system.

I think the way it's set up now it actually helps the board to discriminate, because once the claim is filed then, "Oh, well, it's in adjudication. We could just do this for the next 10 years because it's in adjudication."

The Chair: Can I just get your name for the record?

Ms. Scharf: It's Jane Scharf. I'm acting as advocate for Lorraine. I've assisted her in the preparation of her claim. All the way through we've found, as Lorraine has said, the process is not guided by the rules of natural justice. There's no obligation; there's just all this discretion. It's become very blatant.

For example, just briefly, in Lorraine's case, the auditors did a review of the Ottawa board at the time when she was filing her complaint and the chair, Jim Libby, made a public statement to the effect that they were not meeting the needs of disabled children and they even had a human rights complaint. An auditor investigation the same year concluded that there was no accountability in the process between the board of education and the boards and that the special-needs children were not getting their needs met. You don't get any harder evidence than that. They reviewed all the funding and the documentation and all of that and confirmed what the essence of her complaint was stating. And yet here she is, how many years after that—five years later—and they are throwing out her case because it doesn't have enough evidence.

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Mrs. Van Bommel: Under the proposed legislation, you would have direct access to the tribunal. Do you think you would fare better in a process like that, as opposed to going through the commission and then to the tribunal?

Ms. Scharf: No. I guess I didn't say what I meant to say clearly. I think that if the system the way it's set up now was guided by the principles of natural justice, if you added that into this pot, then you would get an appropriate resolution process happening. I don't think the problem is that the person can't go directly to the tribunal; it's that the investigation process is not operated properly. There are a lot of resources going into it that just amount to screwing the parent around and oblit-

erating any chance they might have of proceeding to the tribunal. They're impeding the process.

If they were required by their own legislation to handle evidence reasonably and to behave—again, when the commission is investigating, it acts as an agent for the board. The board doesn't even have to—

The Chair: Thank you very much.

The official opposition.

Mrs. Elliott: Thank you very much, Ms. Paquin, for your heartfelt presentation.

Ms. Paquin: Thank you. It's been quite the road.

Mrs. Elliott: I can only imagine. When it comes to our children, I know that we'll go to the wall for them. I have a lot of understanding of the frustrations that parents of special-needs children feel with respect to the educational system, but I guess those issues are questions for another day.

When you talk about the issues relating to natural justice with respect to the actions of the commission, what natural justice means to me is that you need to have the right to have input into what's going on, that you have the right to have all of the evidence presented to support your case. The sense I'm getting here is that you feel somewhat powerless once it gets into the system, that you don't really have the right to be as involved as you would like to be in the presentation of it. Even though you're getting some assistance, you're not part of the process. It's sort of a powerlessness that you're feeling. Is that fair to say?

Ms. Paquin: Exactly, unfairness because they don't even give you the evidence that they base their decision on: "Well, why do you say insufficient evidence?" They won't even provide us with their testimonial evidence.

Mrs. Elliott: Yes. When you don't know the criteria for making the decision, then the decision itself seems somewhat meaningless.

Ms. Paquin: It's not fair. And I've worked hard on responding every time there's a different step, like in mediation, the bar conciliations. I've worked hard at answering everything properly. They make you out to look like an idiot for just trying to get the supports and services you're entitled to, that kind of thing.

Mrs. Elliott: So do you think, then, that if the rules around the commission's investigation were changed, that would have allowed you to proceed and feel that you had been more fairly dealt with at the end of the day?

Ms. Paquin: Yes, I agree.

Mrs. Elliott: Thank you very much. I assure you we'll be taking that into consideration.

Ms. Paquin: Thank you.

Mr. Kormos: Please don't go, Ms. Paquin.

Ms. Paquin: I'm on vacation.

Mr. Kormos: In a manner of speaking, so are we, Ms. Paquin.

Ms. Paquin: I'm joking.

Mr. Kormos: Nobody's actually doing heavy lifting here.

Thank you very much for coming here.

Ms. Paquin: You're welcome.

Mr. Kormos: You made a very effective presentation, because I think you make this point. Mr. Fenson, who's a legislative research officer—very experienced, very smart—is making a summary of all of the concerns that have been expressed about the commission, including yours today, because tomorrow I'll be moving a motion for this committee to have Keith Norton, Barbara Hall—and quite frankly, I believe we need management out of the commission as well as some commission officers—attending in this committee to respond to the concerns that you've raised and that other people have raised.

Ms. Paquin: I appreciate that.

Mr. Kormos: What is frustrating, Chair—I've got to tell you, it rots my socks—is that this exercise should have been done long before Bill 107 was drafted. Had we invited members of the public, across the board, to come to the committee to talk about the commission and the tribunal, to understand what the real problems are, then we probably would have been far more successful at getting the government to produce amendments, as necessary, that address the real issues.

Look, there are people who support the legislation, people who oppose the legislation; God bless. There are people like you who have far more grassroots concerns, right?—gut level, personal, experiential concerns. We should have been listening to you two years ago rather than after the horse has left the barn. Do you know what I'm saying? That would have been a far more effective use of your time and our time. Thank you very much.

Ms. Paquin: No, thank you for listening.

Mr. Kormos: Good luck, and best wishes.

Ms. Paquin: Good luck to everybody too.

Mr. Kormos: We need it.

GREG BONNAH

The Chair: Next is Greg Bonnah. Good morning.

Mr. Greg Bonnah: Thank you, Chair. I have Charles Matthews sitting with me, who will respond to questions afterwards if there's time.

Thank you for granting me the time to speak to you. For your information, I am the parent of a disabled child. I sit for Integration Action for Inclusion in Education and Community on the special education advisory committee of the OCDSB. I write the education column for Access Now. I am an education consultant for Disabled and Proud and for Integration Action of Ottawa.

Today you will hear from many groups on how changes to the commission are going to affect them, so I am here for Access Now to talk about how changes to the commission will affect the disabled in general. But I first wish to speak to you as a parent of a disabled child, to express my opinion on how I see the commission and code being strengthened.

I, unfortunately, have had the misfortune of having had to go to the commission to right a wrong perpetrated against my child. In April 1999, the Ontario Human Rights Commission—case SBHE-3RNKSX—successfully assisted me in investigating and mediating a settle-

ment concerning waiting lists for special-needs children at daycare centres. The changes that you are contemplating would have prevented a mediated settlement and would have forced me into a potentially more confrontational situation, so please reconsider removing the mediatory and investigative portions of the commission.

My main concern here was that I filed this complaint in July 1997, so nearly two years went by before the practice of placing children on wait lists that would never be accessed ceased. From what I have been told by other complainants, the commission was working quickly in my child's case. Two years in a child's life is anything but quick. Something must be done to ensure that cases are solved in a more timely fashion.

The UN's Convention on the Rights of the Child, article 23, recognizes the rights of children with disabilities to "enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community." The article further requires states parties to extend special care to such children to ensure that they have effective access to and receive training, education and preparation for employment, among other services, in a "manner conducive to the child's achieving the fullest possible social integration and individual development."

The UN's Declaration on the Rights of Disabled Persons affirms in section 6 the rights of persons with disabilities to education and vocational training and other services which will "enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration."

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The UNESCO 1994 World Conference on Special Needs Education resulted in the Salamanca statement and framework for action on special-needs education, which emphasized that educational systems and programs should be designed and implemented to take into account the wide diversity of children's needs and characteristics. And those with special educational needs should have access to regular schools, which should accommodate them within a child-centred pedagogy capable of meeting those needs. According to this document, "Regular schools with inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all. Moreover, they provide an effective education for the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system." Canada is a signatory to these agreements; therefore, any changes to the OHRC must be compliant with them.

The Canadian Charter of Rights and Freedoms, section 15(1) states, "Every individual is equal before and under the law and has the right to equal protection" etc. Yet in section 10(1) of the Ontario Human Rights Code's definitions, part I, "age" means an age that is 18 years or more." Does this mean that currently children in Ontario are not recognized as being citizens and are not covered under the code? This is clearly not in keeping with the

UN Convention on the Rights of the Child, the rights of the disabled, the Salamanca statement or the Canadian Charter of Rights and Freedoms. I truly hope that, if true, you rectify this situation, because without education our children will never have the opportunity to reach their full potential and be able to enjoy the life they should have.

Currently, persons with disabilities in Ontario have only two options to fall back on when common sense fails within the government of Ontario. They are the Ombudsman's office and the OHRC. On June 22, 2006, the Ombudsman, André Marin, noted in his press release that "At present, our office's jurisdiction is confined to 'government organizations,' even though much of what government does and pays for is carried out by different bodies acting as government agents. This limitation on our jurisdiction makes no sense. There is simply no merit to arbitrarily limiting access to our inexpensive, informal and effective methods of problem solving."

The Attorney's Generals office in 2004, before the Supreme Court of Canada, in the Auton case, stated that the province would take care of any child that they harmed. My child was adversely affected by what the government of Ontario, through the Ministry of Health, calls an adverse event to the DPT vaccine.

MPP Cam Jackson, at the standing committee on social policy on Tuesday, February 8, 2005, stated, "For those of us in public life, the most difficult time we have is when we fail. I took forward the legislation in 1986 on behalf of vaccine-damaged children and their families in Ontario and I was unsuccessful. The legislation was very specific. Then I proposed that if there was an adverse reaction, the second injection was to be stopped immediately, that the tests were to be allowed." My child was harmed by the second shot.

Let's see how the government of Ontario has taken care of a child that they harmed. MCSS would have been content to pay a fortune to warehouse my child, but just try getting a few dollars out of them to bring him along to his full potential. Here in Ottawa, organizations like service coordination and special services at home receive money from the government and set their own priorities for dispensing it. It appears from my perspective that their main priority is in dealing with children in segregated environments. I have to do tons of useless paperwork every year and they have the audacity to tell me how fortunate I am to receive 10% of what I requested. Their suggestion for me to obtain more funding is to exaggerate my child's needs. Personally, I do not like to lie because I find it easier to keep track of the truth. But, in my opinion, this validates what the Ombudsman stated in his report *Between a Rock and a Hard Place* in May 2005 concerning the homeostasis that is prevalent throughout MCSS, that the system is designed to keep these people employed, not to ensure the needs of the client.

The Ministry of Education, the architects of the Education Act and its rules and regulations: In the real world, he who pays the piper calls the tune, but the school

boards in this province are allowed to march to their own tune. The Ministry of Education gives the OCDSB \$600 million per year, yet the only accountability the ministry demands of the school board is that they not spend one more penny than they receive. When a parent knows that the school board is contravening the act and asks the ministry for help, they abdicate their responsibility and advise the parents to go to court.

The OCDSB has a policy of segregation. This means that they choose to place the resources necessary for special-needs children in what they like to call system classes or schools. If parents want their children in a regular environment, then this school board will use any measure necessary to persuade the parents to do otherwise. In my child's case, this meant involving the police, the CAS and wasting one million taxpayers' dollars.

For the record, since the school board was ordered to put the necessary accommodations in place for him, all behaviours have ceased. In fact, school officials have reported to us that Zachary has beaten his rap and the children at the school are accepting Zachary for himself. Zachary went from pre-reading and pre-math to the grade 1-2 level. He has received awards in reading and music, and this past June he led two school assemblies by playing the national anthem on the piano. Currently, since Zak has graduated from the elementary panel, it appears as if we will have to fight to get these resources yet again because, as the superintendent who is responsible for special education stated in a letter dated March 2, 2006, "The tribunal decision addressed circumstances as existed when your son was in the elementary panel."

So while the Attorney's General's office may claim to the Supreme Court of Canada that the province of Ontario is taking care of the children they harm, either unintentionally or deliberately they never defined what that meant. Having a child that was harmed by a government decision not to test children for adverse events to vaccines, I have seen first-hand the reality, that the education system does the minimum until the child is 21, then they become the property of MCSS. These children are just a means to justify employment for others, and if a parent is foolish enough to actually want the system to work for this child, then MCSS and the MOE, through its agent, the OCDSB, have ways to re-educate us.

So from a personal point of view, I hope to strengthen the commission by reducing the process time, and the code by expanding it to include children.

Now then, changing hats, as a member from Access Now who was asked to speak here today, last February the government said it would eliminate the Human Rights Commission's core role of investigating human rights violations and prosecuting where evidence warrants. The government said it would instead provide legal representation for discrimination victims who take their case to the Human Rights Tribunal. When introducing Bill 107 last spring, it made the extravagant promise that each and every human rights complainant would be given

legal representation at the Human Rights Tribunal regardless of their income. A new human rights legal clinic would do this work.

The government has so far committed no long-term new funding for these promises. It has been over five months since it announced its massive plans. The AODA Alliance has repeatedly requested details on how the government plans to deliver on its commitments. Back on June 8, 2006, Attorney General Michael Bryant said he will propose amendments to Bill 107. These will address provision of legal representation, among other things. The AODA Alliance wrote him on June 28, 2006, to ask for specifics of these amendments. We are still waiting for a response.

The human rights enforcement system clearly needs significant new funding. However, if the government just announces some funding for its promised new legal clinic, this quick fix alone won't solve Bill 107's many serious flaws. This is because any new, quick-fix funding won't change the fact that Bill 107 makes the Human Rights Commission much weaker. It largely removes the commission's enforcement powers. It takes away from discrimination victims the right to have their complaints publicly investigated, the right to ensure that hearings at the Human Rights Tribunal are fair and the broad right to appeal to a court from a tribunal decision against a complainant.

Any new, quick-fix funding this year can easily be cut again next year, or after the next election. Unless the new funding is very, very substantial, it won't live up to, even in the short term, the government's sweeping commitment to ensure that every human rights complainant has legal representation at the Human Rights Tribunal. Now there are at least some 2,500 cases in the human rights system. More will be launched in the future.

Any quick fix funding this year won't undo Bill 107's serious breach of the McGuinty government's understanding with the disability community regarding enforcement of the Accessibility for Ontarians with Disabilities Act. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After winning the election, the new McGuinty government rejected disability community requests to create a new independent agency to enforce the new disability act. The government said it wasn't needed since persons with disabilities can use the Human Rights Commission to enforce their rights. Now Bill 107 removes most of the Human Rights Commission's public enforcement teeth. Any new, quick-fix funding of the proposed legal clinics won't restore those teeth.

I would again like to thank the committee for coming to Ottawa and listening to ordinary people.

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The Chair: Thank you very much. Two minutes for each side, beginning with the official opposition.

Mrs. Elliott: Thank you very much, Mr. Bonnah, for your comments, both as a representative of Access Now and in your personal capacity.

In your official capacity, I agree with the concerns that you've expressed. Many individuals and groups who have appeared before the committee also shared those concerns. That is something that is going to need to be addressed, without question.

In your personal capacity, I think you may have heard my previous comments, that I'm certainly well aware of the frustrations and the issues that people have with special-needs children and local boards of education, and that's an ongoing issue. But as far as the issue of delay is concerned, I think that is one of the fundamental issues we need to address with respect to the operation of the commission, because as you say, two years is a very long time in a child's life and the time to take action to achieve the best success is in the very early years. That's also going to be something that we will definitely need to be concentrating on. Thank you for bringing that to our attention.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, both of you, for your participation today. You've both been active in advocacy for persons with disabilities, advocacy around human rights issues in the broadest sense, obviously, for so long. I know there are some old reports, and jurisdictions like British Columbia have implemented the direct access system, causing great crisis in the communities there that advocate for human rights. But where in hell did the government get the idea that anybody in Ontario wanted to see the Human Rights Commission abolished? We've heard from folks who say the commission needs some tuning up, right? Clearly there are some problems and backlogs. But my goodness, did you write to Mr. Bryant saying, "Please abolish the commission"?

Mr. Bonnah: No.

Mr. Kormos: And in terms of your contacts within the community of advocates for human rights, are you aware of anybody who wrote to Mr. Bryant saying, "Please abolish the commission"?

Mr. Bonnah: No.

Mr. Kormos: Where would the government get that—what is going on over on Bay Street, in that tower of policy drones? Do you have any idea?

Mr. Bonnah: I really don't want to know.

Mr. Kormos: Gotcha. Thank you, sir.

The Chair: The government side.

Mr. Berardinetti: I want to thank you for your presentation. I just had a quick question. The thought is running through my mind. In your presentation you mentioned that it took two years, basically, for anything to happen through the commission. I'm just looking at the legislation and I'm trying to think this out, too, in my own mind. Under section 37, "Disposition of applications," it says, "The tribunal shall dispose of an application under this part through a hearing or through any alternative dispute resolution mechanism provided for in the tribunal rules." And subsection (2) says, "The tribunal shall adopt the most expeditious method of disposing of an application on the merits."

So I guess my question is this—and I'm not trying to be smart about it, I'm just trying to think this out in my

own mind. Would you not have more legal teeth yourself, more potential strength, if you had a problem and went to the tribunal instead of the commission, and after six months or eight months, if you were waiting, you'd say, "Hey, wait a minute, there's a section here that says you've got to deal with this expeditiously and you're not, so I'm now going to take action to get this thing dealt with," instead of it going into a black hole?

Mr. Bonnah: You've got to have both. Back in 1997, I was not capable of going before a tribunal or speaking before you guys or stuff like that. I have learned since then to do it. But the vast majority of people—it's a very confrontational situation. It's a winner-take-all situation. Mediation is very, very important, because then both sides come out of it feeling good and there will be a lot more co-operation in getting things done.

The investigative portion of it—very few people have the resources or the time or the wherewithal to actually do the proper investigation. Taking that away is going to create a two-tier system. The rich are going to get the education, the poor are not—and access to lawyers, that sort of stuff. When I had to go through this the last time, if it wasn't for the generosity of groups like Gowling or Borden Ladner Gervais, I would never have been able to afford all of this stuff. But it still cost me \$40,000—that was not funded by the taxpayers—while the school board was getting \$1 million fully funded.

Mr. Berardinetti: But if the Attorney General or the government would provide you with legal assistance and perhaps make some amendments here so that you would have the right to a lawyer at the start of your case, would you not want—

Mr. Bonnah: And how are you going to fund this?

Mr. Berardinetti: This is something that's been brought up in hearing from people, and it's a good point—

Mr. Bonnah: Part of it is that, and for some persons who do want to go that route, you've got to have it. But mediation is still very, very important.

Mr. Berardinetti: Yes, I just don't want to see something—I would feel frustrated if I were in your shoes with something going to a commission for two years and being left in a black hole, where you don't know when you're going to hear back. Maybe that's a way—

Mr. Bonnah: Like the previous speaker said, we've got to have the information coming back to us. We've got to know where we're standing. When they just come back and say, "Case dismissed," and no reason for it and no evidence, then it leaves you very frustrated.

Mr. Berardinetti: Yes, and I agree totally with you on that.

The Chair: Thank you very much.

ACCESSIBILITY CONSULTANTS ASSOCIATION OF ONTARIO

The Chair: The next group is Accessibility Consultants Association of Ontario.

Mr. Kormos: Chair, while they're seating themselves, could I request of Mr. Fenson, the research officer, to please find out for us what the wait times are in the civil courts between filing a statement of claim and the matter going to trial? Is it two years, five years, 10 years or 12 years? Perhaps he could give us some help in understanding how in the private litigation world the black holes are wider, deeper, darker, scarier and far more expensive.

The Chair: Good morning. You may begin. If you could state your name for the record, please.

Mr. Rick Sinclair: Good morning. Looking around, gentlemen, I thought we were overdressed. It's too hot for a suit jacket.

My name is Rick Sinclair. I'm appearing before you today on behalf of the Accessibility Consultants Association of Ontario, as their president, to comment on the provisions of Bill 107. We've provided printed copies of my comments and a booklet addressing the issue of missed business, kindly provided by association member Shane Holten of SPH Consulting in Toronto.

As an association, we agree with and support the comments of the AODA Alliance, and I won't waste time by reiterating those comments here, except to refer to them when it is specific to the concerns of the ACAO or our clients.

Like the alliance, our concern lies primarily with the AODA, the Accessibility for Ontarians with Disabilities Act. Bill 107 affects that act, since the enforcement of the AODA was to be the responsibility of the Ontario Human Rights Commission. Although the AODA has provisions for enforcement within the act, they have never been implemented. We were told that the Ontario Human Rights Commission would handle it.

It is proposed under this bill that the enforcement will now be removed from the commission, leaving the AODA with no enforcement at all. This sends a very negative message to both the ACAO and our clients. You're saying, "We have this legislation for disability accommodation, but you can safely ignore it, since we have no intention of enforcing it." This gives heart to the bad guys, while making a laughingstock of our client companies who have attempted to implement disability access in good faith. It further says that this government does not know what it's doing. You cannot address Bill 107 without addressing its impact on the AODA.

1020

Accessibility accommodation is not just a "nice to have"; it's an integral part of access to a disability market worth an estimated \$1.25 billion in Canada, based on 10% of the figures established for the United States. By that I mean the ability to service people who have a disability. They're still spending money: they're buying groceries; they're buying consumer items; they're traveling; they're doing all these things. But they need assistance from the companies or organizations that are providing those services so that they can take advantage of them. My experience with the United States has been

that they don't see it as an onerous responsibility but as a profitable venture.

In both Canada and the United States, our populations are aging. With age comes certain disabilities for a significant number, which means changes in the way companies service their customers. Persons who cannot hear well on the phone, stand in long lineups, read the fine print on documents—or read the document at all—all need to deal with business differently, whether they be a customer or part of the organization's staff. That's an issue I'll come to in a moment. In the tourist industry alone, we have customers from the United States arriving and expecting a level of service here dictated by their ADA. To stay in business, we need to address that segment of the market.

Accessibility for those disabled also affects the workforce. Behind the wave of the baby boom, which is now reaching the age of late-onset disability, we have a vacuum in the labour force. We will not have enough workers in many trades and services to address the size of the current markets, let alone any expansion—an expansion that will be necessary to maintain the tax revenues to support the province's social net. It is crucial that the labour force not be reduced by the unsought retirement of employees otherwise able to do their jobs if access technology is implemented in business systems. We can't afford to lose those people. Bill 107 is saying, indirectly, that the government doesn't consider that potential workforce loss to be a problem.

In summary, Bill 107 sends a message that encourages the fly-by-night company willing to cut corners and discourages normally law-abiding firms from following the government's lead with the AODA. We direct attention away from changes necessary to maintain our skilled workforce at a time when their numbers are becoming crucial to the province's economic welfare. Bill 107, as it currently stands, is simply the wrong thing to do. We urge you to consider the weaknesses in this bill and make the changes necessary. Thank you for your time.

That concludes the official statement of the AODA. I'll just throw in a couple of personal comments. One, as you can see, I am wearing a CI. I've coped all my life with progressive hearing loss. Also, when I came to sit down over here, I was limping slightly. That's because I twisted my knee on the golf course this week, which is something that can affect anybody at this table. I point this out in the sense of self-preservation, when you start looking at this stuff. Because 50% of the complaints concern disability—only 10% of that disability are people who were born with them. I'm lucky; I was born with hearing loss. It's people like the people around this table who are suddenly hit with hearing loss that I feel sorry for. All of a sudden, you have to cope in an adult world. You can go out of this room today, look around while crossing that street, and, "Welcome to the club." So it's not just about people with disabilities, because it's very, very easy to join this club. You can be able-bodied today, and tomorrow you wake up different. It concerns everybody.

I don't like what I see. I'm a long-term Liberal; I'll admit it. I've been out there banging campaign signs into the snow, handing out pamphlets at doorways, freezing my butt off for years, and in return for that I expect to see Liberal legislation be Liberal legislation. Honestly, I look at this stuff and I'm thinking Mike Harris's Common Sense Revolution, which wasn't, as far as disability was concerned. I can't believe that you guys have brought this in.

I'll take any questions.

The Chair: Thank you very much. A little bit over four minutes each. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, Mr. Sinclair. I'm very tempted to just leave it at that. But I do want to commend you for bringing this insight, that we don't believe in access—real access, full access—because we're nice guys; we believe in it because it's smart policy. It's good for everybody; it's good economics; it's good social policy. It has nothing to do with touchy-feely niceness. I appreciate that very pragmatic perspective because that's often overlooked. So many Ontarians simply and regrettably don't understand that access doesn't mean a ramp to the back door of a building. It means full participation in the economy. It means full participation in the society.

That's a challenging goal, but that's why—what's going on? What is going on that people would want to abolish the commission? As you heard me ask other people here, if there are problems with the commission—and quite frankly, it appears there are from time to time problems, certainly a consistent problem of time frames, the time in which it takes a matter to proceed. Where's this drive coming from amongst real Ontarians, people out there in communities across the province? Where is the drive coming from to abolish the commission? I'm not aware of it. Even the supporters of Bill 107—nobody is suggesting that any of them wrote letters saying, "Please abolish the commission." And there are supporters for 107. Do you understand? Do you have any sense of where it's coming from?

Mr. Sinclair: No, I don't understand where it's coming from. Part of my private practice is that I'm the in-house consultant to the Canadian Human Rights Commission, and I'm hearing less—I'm not a lawyer—

Mr. Kormos: To your credit.

Mr. Sinclair: —I'm a consultant. I'm a specialist. But my understanding is that the feds managed to clean up all of their backlog in the commission without removing enforcement, so maybe a good place to start would be to ask them how they did it.

Bill 107 totally took me by surprise. I don't understand where it's coming from. I don't really know what it's intended to accomplish. I'm not hearing a message that tells me, as a man on the street, that this is a good thing. I don't know why it's being done.

Mr. Kormos: Thank you, sir. I'll leave it at that.

The Chair: Mr. McMeekin.

Mr. Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot): Speaking after you, Mr. Sinclair, is

like dancing after Baryshnikov. By the way, ever since I wrenched my knee, my game has been so bad I've had to send my ball retriever out to get regripped. You being a golfer, you'd understand that.

Like you, I want to see us do the right thing. Perhaps unlike you, I'm not always sure what that is. Governments always—the trick is to try to balance competing issues and concerns and hopefully come up with something that helps. I'm wondering, sir, particularly given your confession, if you could tell us very specifically what—do we have to go back to the drawing board or are there three specific things you'd like to see happen that might improve this legislation? If there were three things, what might they be?

Mr. Sinclair: Three things? Number one is, don't remove the enforcement, for the simple reason that it sends the wrong message. It sends a really bad message. It's going to make the rest of your work on human rights that much more difficult, because you're telling companies they don't have to pay attention to what you're doing.

1030

Second is effective standards. You tell me that 50% of the complaints before the Ontario Human Rights Commission concern disability. If you have clear and adequate standards as to what a company has to do to comply, a lot of that will probably go down. I don't hear resistance from companies that are clients of the ACAO members. They say, "Yes, we would like to do that. We're not monsters, we're people who happen to run businesses, but we also have an interest in our society. If it's possible to comply with this, that's a cost of doing business. We'll get it back." Maybe you put the price up a few cents. But the point is, yes, they want to be actively involved in making sure that it's accessible if for no other reason than they have this huge baby boomer bulge coming through that spends a lot of money and is going to need different ways of accessing services and products. If you go to a bank these days, you see a teller with chairs for seniors because they can't stand anymore at the desk. Now, that keeps them coming back to that bank. They're pragmatic.

The standards that I'm seeing are coming from the AODA. One of my members said it took 27 people five months to produce this; she could have done it in an afternoon. It's remiss. I don't know whether the members have seen them yet, but I've seen them, and we're going to have to do a lot better.

To the extent that we can come out with true, accurate standards for access, everybody can relax. Everybody knows what you need at that point, and you're not going to be getting cases of discrimination due to disability. A lot of the time, it's not discrimination, it's ignorance. They don't know what they have to do. So that would be my second one.

The third one is, you're going to need expertise both at the government level and particularly at the public service level. When you set the public service to define the "how" to your "what," they need expertise. That com-

ment is self-serving, because I'm a professional consultant, but we offered and heard nothing back from the public service. I've got experts on the ACAO on just about every type of disability there is. We said, "We're willing to work with you. Yes, that's what we do for a living, but we can help you acquire comprehensive standards." One way or another, there has to be more expertise in addressing the issues. That's why I have to say those are my three points.

Mr. McMeekin: Thanks. I appreciate it.

The Chair: Mr. Runciman.

Mr. Robert W. Runciman (Leeds-Grenville): Thanks for being here. I'm just curious about your organization and the expertise. How large an organization is it? It says "Ontario," so you're province-wide? You're represented in most areas of the province?

Mr. Sinclair: We're a small organization at the moment, not the biggest—probably under 25 members—but there are not a lot of accessibility consultants to begin with.

I had a delegation here in Ottawa from South Africa that was looking for answers for the South African government. They said we were the only company they found in five countries that could give them the answers they were looking for. There are not a lot of us.

Mr. Runciman: You mentioned earlier in response to Mr. McMeekin that you offered your expertise through the public service or through the government. What was the approach there and to whom?

Mr. Sinclair: It was to the public service in the ministry.

Mr. Runciman: But they didn't take you up on the offer. Was this prior to the legislation being tabled? Was there—

Mr. Sinclair: We didn't get an answer at all.

Mr. Runciman: You didn't get an answer at all. So there was no opportunity—I know Mr. Kormos raised this issue before, that it's too bad we've heard about democratic renewal from the current government, but this is an example where standing committees of the Legislature could have performed a very valuable service in terms of public hearings and drafting legislation. Mr. McMeekin suggested that maybe we have to go back to the drawing board. I am not sitting through these hearings to their conclusion, but what I'm hearing is that even the delegates who support the legislation to some degree have reservations. I think there's no question that it will have to go back to the drawing board. The problem with that is that governments are reluctant to go back to the drawing board, and ministers who have carriage of the legislation are even more reluctant—but there could be a cabinet shuffle this fall.

I suspect that the real reasons for doing away with the commission and the enforcement side, which was a clear commitment with respect to the disabilities act, is cost-cutting. My colleague mentioned flatlining, but we were made aware of plans within the ministry last year to cut \$330 million out of the justice portfolios and various responsibilities.

My own observation, from outside looking in, is that this was some sort of a cost-cutting measure. It seems to me that streamlining the commission's approach and perhaps additional resources to cut down the backlog would have been—what we're hearing this morning—the more appropriate way to proceed with this. I'm assuming, especially with the commitment made to enforcement of the disabilities act, that that's an approach your organization would recommend. Yes, no, maybe?

Mr. Sinclair: I'm not exactly sure how you're going to cut down the provincial backlog. I'm not an expert in that area. The distinction might lie between the political side and the public service side as far as solving that problem. I don't know whether or not you have to go back to the beginning, but I do know that it's going to cost you far more if you wind up having to pay out disability benefits to somebody who might have been a taxpayer. I know people like this; we'd just as soon be in the workforce.

A lot of my own members have spouses who are supporting them while they do the job of being consultants. They have the hope that eventually they will earn a living wage, but they're not asking the government to give them a pension or a grant or a handout. They want to be first-class, not second-class citizens. That's what is important to us. They're running their own businesses as best they can, and they pay taxes, like me. It's probably a lot cheaper for the government to create taxpayers than it is to create a problem where they have to pay people to stay home.

Mr. Runciman: Thanks for your contribution.

The Chair: Thank you very much.

LAURIE ALPHONSE

The Chair: Next up is Laurie Alphonse.

Ms. Laurie Alphonse: Good morning to you all. If you could just give me two minutes to get myself together here. Having just come through the construction on Queen Street, I got here a little later than I had anticipated.

The Chair: If you'd like a few more minutes, we can go to the next presenter, and then you could come back.

Ms. Alphonse: No, it's okay. I just needed a few minutes or so.

The Chair: Okay. Take your time.

Ms. Alphonse: Thank you for the opportunity to speak to you this morning. The work of the Ontario Human Rights Commission is something very near and dear to my heart, as you can probably see by looking at me. Just to give you a little bit of background about myself, I work as a consultant, much in the same way that that gentleman just spoke about, doing the work that you can when you can do it. I work in the Ottawa region. I work to make sure that those who are disadvantaged have their rights taken care of. I have in the past worked on Social Benefits Tribunal work. I am an advocate. I sit on two or three boards of directors of non-profit corporations. Ontario is where I have lived, worked, done

my education, and it is where I wish to continue to live. But looking at what is being proposed, the proposed changes to the Human Rights Commission, I'm not sure I'm going to want to live in Ontario anymore.

1040

I have experienced discrimination to a degree that I'm not going to get into today, but I also am very gifted in my ability to speak up, and that has probably limited the discrimination I have experienced. I think the creators of Bill 107 have never experienced discrimination in their lives, because had they ever experienced it, they would not be proposing such measures.

The investigative measures provided for in the Human Rights Commission allow for an equalization of terms when you are bringing forward a complaint. The people handling those complaints will spend time investigating to make sure that they have all the facts. It's not as adversarial as the court system, and in doing so, it provides for looking at the sensitivity required for people who have experienced discrimination.

The court system is not set up to do so. In his comments, the Attorney General said that he would make sure legal representation was provided for those who need it when they had their day in court. Having worked within the legal aid system, I can tell you that the resources of legal aid are already stretched. I do not know how, under any circumstances, the prior responsibilities of the Human Rights Commission can be off-loaded to the court system without there being a downloading of rights as well. And that scares me, frankly.

I have worked with people for whom the idea of bringing something forward to the Human Rights Commission is barely palatable. The idea of bringing things forward through a court proceeding—they'd take off and run in the other direction, because their experiences with courts have been even worse than the discrimination they experience on a daily basis. This is not the way to go.

In February 2005, I sat in a room not unlike this one at the Holiday Inn down on Cooper Street for the public hearings on Bill 118. I heralded the government for their actions in ensuring an Ontarians with Disabilities Act. And two years later, I'm here to say, "Shame on you" because you've given something with one hand and taken it back with the other. What's the point? The point, I thought, was to make things more accessible and more even for people with disabilities, but this is a huge slap in the face to the disabled community, this is a huge slap in the face to the black community, this is a huge slap in the face for women. I'm sitting in all those roles and I'm telling you this insults me.

I don't know what you want to do, but here's the thing: When I was deciding what I wanted to do in life, I said, "You know, I've had a lot of volunteers help me through my life, I've had a lot of social workers help me through my life, so maybe I want to be a social worker or a teacher." I became a social worker. I am a registered social worker and a registered member of the college of social workers and social service workers within this province.

When I was in high school, I was told, "College maybe; university, absolutely not." I sit here today having accomplished three university degrees and a college diploma. This spits on all my accomplishments thus far, because I'm going to have to continue to fight the fights I've already fought for the last 36 years of my life. I'm here to say, "Enough, already." Wake up. I thought the government had figured it out when they brought us Bill 118, and Bill 118 is not without its problems, but to give with one hand and take with another leaves the community feeling like—we always tend to think politicians are out for themselves and maybe you're proving that. But you think about that.

You can ask me questions, if you wish.

The Chair: Thank you. We have about three minutes for each side, beginning with the government side.

1050

Mrs. Van Bommel: Thank you very much for the presentation. Yesterday in the hearings we heard from a number of women's groups who told us that they felt the process, as it is now, was very long and drawn out and very intimidating for them, especially because they would have to go through the commission and recount their case to them and then, if they were to go forward to the tribunal, would have to get a new investigation, redo everything they had done. The concern was that they would either not start it at all because they knew it was going to take at least five years or more, or they would become intimidated and exhausted by the process because it was taking all their energies to just go through the process once, and then again.

I read in your presentation that you feel that Bill 118 is contingent on the work of the Human Rights Commission in its current form.

Ms. Alphonse: Yes.

Mrs. Van Bommel: Do you feel that the current form of having to go through the commission and then forward to the tribunal and redoing everything is workable or do you feel there is room for change, that we do need to make changes to the whole process, of some kind, anyway?

Ms. Alphonse: I stop short of saying that there needn't be changes, but what I'm against is the removal of the investigative piece altogether. There is no question there needs to be additional resources placed in the investigative portion in its current form. What I would like to see is not a need to redo an investigation, go from the original investigation, unless there is new evidence. But to say we're going to remove the investigative piece and everybody will get their day in court, you're going to have a lot more people stewing in the discrimination, and that is what I'm against.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you for being here. That was very powerful testimony. Someone who has experienced the challenges in life that you have and has been able to overcome them to a significant degree I think is impressive to all of us sitting here today and many others as well.

I gather essentially the investigative powers of the commission, the removal of those powers, is your primary concern with respect to the legislation as it is currently structured. I'm just wondering if you can elaborate on one of the comments in the written material that we're given here for a few minutes: "To remove investigative powers from the commission and place it back with complainants, while sounding good in theory, will cause widespread discrimination within the very system that has been built to protect against it." I wonder if you could just take a bit of time and explain that more thoroughly.

Ms. Alphonse: The investigations, as I understand them to happen now, are done in conjunction with both parties, and the commission itself will investigate. What is being proposed, as I understand it, is that those pieces would go back through the court system. That requires that folks do a lot of their own investigation and it creates an uneven platform, because we all know with the court system that the more financial resources you have, the more resources you have in which to build a case for or against. So for folks who have already experienced discrimination and for some who are, to begin with, socially disadvantaged, the playing field, as you can probably picture, is going to get even more uneven.

The other concern I have is particularly in the area of people with disabilities. Such is true for those folks. Those are the folks I work with more often.

I hate to say this, but this was a creation of a bunch of lawyers sitting behind their desks who have never had to go through a system to fight for anything for themselves.

The Chair: Thank you very much.

Mr. Kormos?

Mr. Kormos: Well, Ms. Alphonse, I don't think there is anything I can say or ask you that is going to add to the potency and the incredible passion with which you've addressed this issue. So I, in one of those rarest of moments, will decline to say anything but thanks for your interest, for your attendance here.

Look, there are people who are on both sides of this issue. One of the experiences we've had is that there seems to be a preponderance of concerns about the bill rather than all-out, unequivocal support for the bill. I have no idea what high-priced policy people in their ivory tower sat down at their expensive IBM keyboards to draft this thing, but I'm inclined to agree with you about their respective backgrounds. Thank you kindly, Ms. Alphonse.

The Chair: Thank you very much for appearing before the committee today.

REBECCA LIFF

The Chair: The next presenter is Rebecca Liff.

Mrs. Rebecca Liff: My name is Rebecca Liff. Ladies and gentlemen, injustices need to be reversed by province-wide legislation and not by enabling legislation that allows municipalities to take 20 years to pass weak bylaws, and allows irresponsible school and hospital

boards to do as they please because of their autonomy and their indifference to the plight of disadvantaged citizens. Make your vote in the next provincial election count for justice.

The city of Ottawa bylaw calls for zero handicapped parking spots in parking lots with up to 19 available parking spots; one, if the lot has 20 to 99 parking spots; and two, if 100 to 199 parking spots. Note: licensed drivers in Ontario, as of December 31, 2005, total 8,777,358. Accessible parking permits now in circulation are at 465,765. That's 18.5 to 1.

Many existing accessible parking spots are too narrow. Get rid of grandfather clauses. Hospitals need more parking garages. My doctor has to book bone density tests in her office building because of lack of parking at the Riverside and other hospitals. Parking now costs \$3.50 per half-hour at the Riverside hospital campus. Two of my doctors were unable to request physiotherapy for my shoulders at the Riverside. Finally, on August 1, 2006, my dermatologist, who is on staff, referred me to the Riverside, where I will have to wait a minimum of six months before my application is even looked at, because only recent surgery patients get priority.

1100

It should be the law for those who administer medications to patients to verify the names on hospital wristbands with the names of the patients on patients' charts. Alcohol swabs or syringes should be supplied with prescriptions to prevent infections or inaccurate doses. Make legal a safer prescription form requiring lower-case printing for instructions and capital-letter printing for the name of the drug, and blocks or circles to tick or X-mark for easy-off cap on containers for patients with arthritis, or a reminder to supply alcohol swabs or syringes for precisely measuring liquid medications. The labels on the filled prescriptions should state the expiry date of the medications.

In Quebec, a food contractor was sending only two meals a day per patient to two institutions, and charging for three meals. The Alzheimer patients were unable to complain, and maybe the employees were afraid to blow the whistle and lose their jobs. This past April, I shared a room at the general hospital with a lady whose medication the nurse tried to administer to me. My roommate was starved without explanation and given only about half the food I received. The nurses had only available some toast and horridly weak tea to give her. A provincial audit of the food served at the general hospital, for taste, nourishment and cost, should proceed now.

The Ontario Ministry of the Environment should lay charges now against OC Transpo, because OC Transpo has disobeyed the ministry's standing order to, on a monthly basis, adjust the engines on their black-smoke polluting buses to keep the exhaust cleaner. OC Transpo even purchased new buses with the same problem. Cut the O-train and use the new funds for improving the bus system with free bus service to cut down on the use of cars in our city.

I had a problem recently with an escalator at the Bay in the St. Laurent shopping centre. The provincial

ministry official called me back from Toronto to tell me that the escalator was shut down as the left-hand rail had been detached. We need a provincial law requiring each building with escalators to have a daily inspection of all its escalators before patrons come into the building and to slow escalators down to a safer speed.

Why has nothing been done to double the amount of toilets for females in public buildings—the National Arts Centre, for example? I recall during a Dave Broadfoot concert years ago at the National Arts Centre trying to open the door to go outside, as the air was too sparse in the high-up box seats. The door was locked. What if there was a fire in the opera?

The province of Ontario should sue big tobacco and its beneficiaries. I would like Prime Minister Harper to have the Auditor General investigate the financial gain to the Honourable Paul Martin's shipping company by his inaction on the tobacco excise tax issue etc.

All public washrooms should have seats that allow the hips to be higher than the knees. Washrooms should be at least a foot wider than the current standard, and one foot deeper for legroom to door and walker. Grab bars should be on both sides, so that these toilets can be used by anyone other than someone in a wheelchair or a mother with a baby carriage or stroller. There should be at least two large, accessible washrooms, like Wal-Mart has on the ground floor on Bank Street, in case one is out of order. It did happen several months ago. It is not right for Loblaws in College Square to have people use an elevator to go to the washroom, as heavy grocery carts and children's strollers and motorized wheelchairs can hurt people who are in the elevator should there be a malfunction. The Riverside hospital has benches that are too low and toilets that are too low, especially in the main entranceway and the rehabilitation section. There should be ramps, not stairs, to all buildings open to the public, as well as easy-opening doors with long, curved, vertical handles.

In order for their very, very disabled children to get into special classes in the Ontario school system, parents have to prostitute themselves if they are non-Catholic to follow the Ontario requirement that these children attend Mass, but they are "not required to participate in any of the rituals associated with Mass." To me, this is the same twisted difference, and the parents are too afraid to complain. Examine what the Ontario government did because Premier Harris began to try to reverse a huge injustice to non-Catholic parents who wanted their children to have the same school benefits and attend their own schools the way the Catholic children have been doing for a number of years.

Look at the injustices in our school system in Ontario. We have no charter schools, except Catholic ones funded by our general tax dollars. Many of our teachers are not certified and/or have never studied the subject they are required to teach. Ratepayers, except for Catholics, cannot direct their school taxes to the school of their choice. Partial compensating grants promised to non-Catholic parents were clawed back retroactively, but there has not

yet been a retroactive chargeback of the education costs incurred for the separate schools to the Catholic families who so unfairly benefited. This situation is cruel and unjust.

"Bill 107, An Act to amend the Human Rights Code"—how can you refer to a human rights code in the province of Ontario when there does not appear to be one, especially when non-Catholic citizens, the handicapped and other people are unfairly treated?

Make your vote count for positive change and justice in the next provincial election.

The Chair: Thank you very much. We'll start the questions with the official opposition—about four minutes each.

Mrs. Elliott: Thank you very much for your presentation, Mrs. Liff. You have raised a number of issues in your presentation with respect to some school issues, some municipal issues and some other issues that are of concern to you. I'm just wondering if you have proceeded to the Human Rights Commission with any of those issues.

Mrs. Liff: No.

Mrs. Elliott: Is there a reason why you haven't? Do you have a concern about the commission?

Mrs. Liff: I don't know anything about it. I've been fighting for non-smokers' rights for over 30 years, and it took 30 years to finally get proper legislation. I sat for two years monitoring the Ottawa Board of Education board meetings and I brought forward a lot of comments and things, and they blocked me from talking.

It took two years for me to get an outline of the provincial curriculum, and when I finally got it, I found out that each subject was listed in these two huge, expensive volumes but they consisted of two sentences for each program. In other words, they take unqualified teachers and have them write their daily outline for each course. Many of these teachers have never even studied the course. Then these teachers complain because they're not paid extra time for writing programs when they should never even be writing these programs. They're not even qualified to teach, never mind write programs. If you were going to ask me to write a program to teach a Chinese class, I don't know anything about Chinese and I'm not even a qualified teacher—but this is what they're doing in this province. So I ate my heart out just sitting there, and I couldn't get anywhere with that.

Finally, I wrote Premier Harris and listed all the things, and he was implementing them. Then the Liberals came along and threw everything out, you see? The one who doesn't even understand this twisted explanation of Mass—if you're forcing somebody who's not a Catholic to come into a room with crosses, and they don't have to participate but they're sitting there and listening to that, they're looking, and you don't want that. He doesn't understand that. You see, that's my MPP, who helped a lot with non-smokers' rights. But he's not going to get my vote in the next election because his ideas are twisted and it's twisting all—I listen here to what people are saying. You passed legislation for the handicapped, but

you're giving the storekeepers and the mall owners 20 years to fight with city hall to set up, to provide for parking. We don't have—the parking is available; it's got to be made accessible. If you've got narrow parking spots, take two of them and make them into a handicapped spot, but don't allow one spot for 18, by statistics, and allow two spots for 200, actual. That's wrong.

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Mrs. Elliott: Thank you very much. I appreciate your response.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, Mrs. Liff. I read in addition to your submission the material you sent with it. You are prolific in how you address these matters.

Mrs. Liff: I try to give evidence. I'm not just making up stories.

Mr. Kormos: Quite right. We're just members of the opposition, but the most powerful person on this committee is David Zimmer. He's the parliamentary assistant to the Attorney General. He has the Attorney General's ear on a daily basis.

We have lunch break from, what, 12 till 1? If you can stay, I know that he'd want to hear from you directly and review some of this stuff. So, please. He's got staff here. He's got to be called out from time to time because he is a parliamentary assistant, but I know he'd want to spend some time with you reviewing this stuff. Please. Thank you.

Mrs. Liff: Okay.

The Chair: Mrs. Liff, the government side may have questions for you. Are there any questions from them?

Mr. Berardinetti: I think the presentation was straightforward. Thank you for your comments. We'll take them into consideration.

Mrs. Liff: You'll have all the details. There are about 50 sheets of stuff to back up, but not on the education thing, because this I said to Premier Mike Harris way back.

The Chair: Thank you very much.

EDUCATION EQUALITY IN ONTARIO

The Chair: The next presentation is from Education Equality in Ontario.

Mr. Leonard Baak: Thank you, Mr. Chair. Good morning. My name is Leonard Baak. I am president of Education Equality in Ontario. I'm here today with our chairman, Thomas Layer.

Education Equality in Ontario is a non-governmental human rights organization and education advocacy group. We seek the elimination of religious discrimination and duplication in the Ontario school system through the establishment of a single, publicly funded school system for each official language—English and French.

Ontario's divided school system was born out of 19th century realities. Ontarians of the day could generally be categorized as being either Protestant or Roman Catholic, and neither group had much tolerance for the religious

teachings of the other. The laws of the day accommodated that intolerance by allowing for the segregation of students between the public system, which incorporated Protestant religious education, and a separate system for Roman Catholics. To assuage fears of eventual assimilation into a distinctly Protestant public school system, that segregation became a constitutional right for the Roman Catholic minority at the time of Confederation. The Protestant/Catholic, French/English and Irish/Anglo divisions in pre-Confederation Ontario society—

Interruption.

Mr. Baak: —sorry—together with the Protestant character of most public schools, were the reasons Roman Catholic separate schools were created. The original rationale for their existence is gone today. It is time to move on.

Today, the uniqueness of publicly funded school choice and additional employment opportunities for the members of a single faith group constitutes discrimination that offends the equality guarantees of the human rights instruments to which Canada is a party.

Ontario separate schools enjoy an unfettered right to discriminate against non-Catholic Ontarians in admissions before grade 9. All Ontarians bear the same tax burden, but only Catholic Ontarians enjoy the right to a publicly funded school choice.

While on the outside that choice might appear to be a religious one, the fact is that three quarters of the families using publicly funded Catholic schools today are “un-churched”—that information is from a Catholic priest—some are openly atheist or agnostic, and more and more are not even Christian. Most of the families choosing separate schools today are making a secular choice between two school systems based on secular factors such as facilities, standardized test scores, programs, locations and transportation. Religion is seldom the determining factor in making that choice, and I refer in a footnote to a poll conducted by the OSSTF.

Whether made for religious or secular reasons, that choice often ensures Ontario Catholics a higher quality of education than their non-Catholic neighbours. In some neighbourhoods, the separate school will be the better one; in others, the public school. If the better school happens to be the separate school, only Catholics are assured access at the elementary level. That discrimination in choice between publicly funded schools offering the provincial curriculum affects far more Ontarians than the discrimination in religious school funding. It affects millions. One's faith should not allow one to access better publicly funded schools than one's neighbour.

The discrimination in religious school funding cannot be ignored either. Catholic parents genuinely desiring a religious education for their children receive a government subsidy of over \$8,000 per child per year for that education, while parents of other faiths receive nothing. Given that the constitutional obligation used to excuse the funding of Catholic schools is largely illusory—I'll say more on that later—the exclusivity of funding for

Catholics alone is indefensible. Fairness demands that we fund all religious schools equally or that we fund none.

One cannot forget the situation of Ontario's non-Catholic teachers. One third of Ontario's publicly funded teaching positions, those in the separate system, are essentially closed to two thirds of our citizens. In 1997, Ontario separate school boards won the absolute right to discriminate against non-Catholic teachers in hiring and promotion, a right they appear to use to the fullest.

Our Supreme Court has stated that denominational school rights "make it impossible to treat all Canadians equally." They were right. Non-fundamental denominational school rights render our fundamental equality rights ineffective by virtue of their constitutional status and their exclusive applicability to a single favoured group.

The Canadian Charter of Rights recognizes the widely accepted principle that discrimination by governments may sometimes be acceptable if it has as its object the amelioration of some disadvantage faced by an identifiable group. Affirmative action programs are an example. Such "morally acceptable" discrimination should not be confused with the "morally unacceptable" variety, that which favours groups having no measurable disadvantage when compared to other groups.

The special educational privileges of Ontario Catholics are an example of morally unacceptable discrimination. As a group, they have no measurable disadvantage that might warrant preferential treatment. As the province's largest religious group, Ontario Catholics are arguably the least in need of special consideration or government largesse. The corollary of continuing to uphold their exclusive education rights is to demonstrate contempt for the fundamental equality rights of all other Ontarians.

In November 1999, the UN Human Rights Committee found Canada in violation of the equality provisions of the International Covenant on Civil and Political Rights by virtue of the discrimination in the Ontario school system. They demanded that the situation be remedied by funding all religious education equally or by funding none. The committee censured Canada again in November 2005 for failing to "adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario." Not only was that discrimination not eliminated, but it was actually exacerbated in 2003, when the current Ontario government eliminated public support for all but Roman Catholic religious education.

The religious discrimination in the Ontario school system also offends the equality provisions of the Universal Declaration of Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The education rights enumerated in the Convention on the Rights of the Child are also likely offended by the discriminatory manner in which those rights are given effect in Ontario. Canada is a party to all three of these instruments.

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In August 2005, the Ontario Human Rights Commission—the commission—undertook a review of the

effectiveness of the Ontario human rights system using the Paris Principles for an effective human rights system. In its preliminary comments on the proposed reforms to Ontario's human rights system, the commission reiterated the importance it placed on any new system's consistency with the requirements of the Paris Principles endorsed by Canada. We submit to you that Ontario's system has never been consistent with those principles and that Bill 107 brings it no closer to compliance.

As a national institution, as defined in the Paris Principles, the commission has failed "to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation." That's Paris Principle 3(b). By virtue of the discrimination in our school system, the Ontario government openly violates the equality guarantees of several of the human rights instruments to which Canada is a party. To our knowledge, the commission has never criticized the government for those violations.

The commission has similarly failed "to encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation," principle 3(c). Again, to our knowledge, the commission has never taken any steps to encourage the Ontario government to address their violation of fundamental equality rights within the context of our school system. To our knowledge, the commission has also failed to comment on the reports that Canada is required to submit to the United Nations, reports which universally fail to acknowledge the discrimination in the Ontario school system.

If truly committed to the Paris Principles, the commission must address its shortcomings with respect to its responsibilities as enumerated in those principles. It must break its silence and assert its independence in speaking out forcefully and relentlessly in opposition to the discrimination in the Ontario school system.

If truly committed to the creation of an effective human rights system, the Ontario government must ensure that Bill 107 encourages the commission to live up to its responsibilities as enumerated in the Paris Principles. To facilitate this, the government must take the steps necessary to include the repeal of section 19 of the Ontario Human Rights Code in its Bill 107 reforms. Section 19 effectively absolves the government and separate school boards from responsibility to uphold the code provisions forbidding religious discrimination in services—section 1—and employment—section 5. The government must also ensure that the commission enjoys the necessary independence to fulfill its responsibilities without hindrance or interference of any kind.

The discrimination in the Ontario school system cannot be addressed affordably by extending comparable funding to non-Catholic religious groups. Additionally, such extended funding would only compound the duplication penalty borne by the Ontario taxpayer, further fragment our school system and do nothing to address the discrimination in publicly funded school choice, affecting millions of Ontarians.

Instead, we believe that only one English-language and one French-language school system should enjoy full public funding in Ontario today. Furthermore, admission and employment in those public systems should be open to all Ontarians without discrimination.

A single publicly funded school system for each official language would fully address the discrimination in the Ontario school system and fulfill Ontario's domestic and international obligations to treat Ontarians of all faiths fairly and equitably.

Ontario could move towards a single publicly funded school system with or without constitutional change. Section 43 of the Constitution Act, 1982, provides a mechanism through which constitutional change affecting one or more, but not all, provinces such as denominational school rights can be accomplished through a bilateral amendment between the affected provinces and the Parliament of Canada alone. Quebec and Newfoundland both eliminated denominational school rights through such an amendment in the late 1990s. The Newfoundland amendment was obtained with blinding speed, being proclaimed just four months after being requested by the provincial Legislature. Manitoba eliminated denominational schools unilaterally in 1890, despite a constitutional obligation to provide them virtually identical to Ontario's.

Following the amendment of the Canadian Constitution to recognize the fundamental equality of all Ontarians:

(1) Revisions to the Education Act should be undertaken to remove exclusive entitlements with respect to publicly funded school choice and publicly funded religious education.

(2) Revisions to the Human Rights Code should be undertaken to remove references to the preservation of separate school rights having constitutional origin.

(3) A merger of Ontario's public and separate school systems should be undertaken, resulting in a single publicly funded school system for each official language.

I'll say a short thing on education tax credits here. Education Equality in Ontario is neutral on the virtues of education tax credits for families using public school alternatives, subject to the following conditions:

(1) Any tax credit offered for public school alternatives must apply equally to all Ontarians, including Ontario Catholics. A tax credit good enough for some should be good enough for all. Education Equality in Ontario will vigorously oppose any education tax credit proposal that leaves Ontario Catholics with superior funding compared to families using other public school alternatives.

(2) Any tax credit offered for public school alternatives must not discriminate between religious and non-religious alternatives.

(3) Any tax credit offered for public school alternatives should be modest enough so as to not detract from the quality of education offered in the public school system or encourage an exodus from that system which would undermine the role of public schools in fostering

greater tolerance and understanding between Ontarians of different backgrounds.

Today we have outlined for you the need to change Ontario's Catholics-first-and-only policy with regard to publicly funded school choice and religious school funding. It is time for a religiously neutral provincial government to establish the proper primacy of fundamental equality rights over non-fundamental denominational privilege. There should indeed be one law for all Ontarians.

A single school system is the only affordable way to fully and completely address the discrimination in publicly funded school choice and religious school funding in our school system. From the equitable starting point of one system, the Ontario electorate can decide the issue of education tax credits for themselves in an election.

If this government's commitment to human rights is genuine, it will address the glaring omission of justice for non-Catholic Ontarians in Bill 107. It will address the shortcomings of our human rights system as measured against the Paris Principles for an effective system. In the process, it will do its part to ensure that Canada lives up to its international obligations and that Ontario lives up to its obligations to its own citizens.

Thank you for giving us the opportunity to speak to you today. We'd be happy to take your questions.

The Chair: Thank you very much. There's about a minute for each side. We'll begin with the NDP. The government side? No comments? He's declined. Any comments from the official opposition?

Thank you very much.

I know the committee is scheduled to break for lunch, but seeing that it's only 11:30 and there's a presenter from this afternoon who is here, Mr. Pocklington, if there's no objection, we can hear—

Interjection.

The Chair: Thank you.

MARK POCKLINGTON

The Chair: Mr. Mark Pocklington. You may begin.

Mr. Mark Pocklington: Thank you, Mr. Chairman. Good morning. I thought I was going to say "good afternoon." You caught me a little bit by surprise.

I'm just representing myself. I came up from Brantford. I like coming to Ottawa regularly. I've got family here; my mother is French-Canadian. Any opportunity I can get to come up here, I try to take advantage of.

1130

I have a little something—normally, I'd like to speak off the cuff about the situation I'm involved in with the Human Rights Commission, but my wife insists that I have a habit of drifting when I speak off the cuff, so she forced me to write out a script here. I'll read from it, but she did time me and she told me it took eight minutes, so it shouldn't be too bad.

First, I would like to thank the committee for this forum and providing me with a means to voice my opin-

ions and concerns regarding the changes in the Ontario Human Rights Commission code as proposed in Bill 107.

I just mentioned that I appreciate the visit to Ottawa, and often I get into spirited debates with my francophone relatives over bilingualism. Now that I'm involved in the commission—this is the first time I've ever been involved or associated with a commission. It's involving a francophone discrimination in the workplace issue, and of course that adds a little extra energy to my arguments over language and cultural rights. I thought that even though I'm quite green in the whole business of human rights, sometimes a fresh face sees things a little differently. I just thought I would take the opportunity to present my case, without going into any details; just an overview.

To start with, I filed a human rights claim with the commission in June 2005, so it's a little over a year. In my claim, I allege there was a code violation in the manner and reason for which I was terminated by my employer. From the onset, the staff members of the commission were very courteous and expedited my claim in a professional manner. It was obvious that front-line staff were well-trained in screening applicants and determining the legitimacy of their grievances. I was very encouraged by that process. As time went on, one-on-one support evolved into a request that both parties express their opinions or positions through completing a standard questionnaire. This seemed like a reasonably efficient way to start the claims process and encourage three-way correspondence.

Everything was moving along well until several months passed without any news of progress. To my surprise, on November 17, 2005, last year, I received in the mail a copy of the letter from the commission to the lawyer representing the respondent advising that the case would be transferred to their investigation branch. I brought copies of this letter if you're interested in it. I'm just going to make some-odd references to it. I'd be happy to pass them to you if you wish. I wish to highlight that without prior warning my file was turned over to the investigative office of the Ontario Human Rights Commission. I was not provided with notice that mediation had broken down nor was I informed beforehand that it was necessary to send a *fait-accompli*-style letter that spelled the end of first-round negotiations. If you read the letter, you will note that the respondent's lawyer applied for dismissal of my case, citing that it belonged in civil court, and the commission decided it would address their request only after an investigation was completed.

Looking back, I anticipated the commission would take a more distinct approach to resolving my case. What I imagined was that in a claim such as mine, the focus would be on upholding the human dignity of employment. It seemed natural that if my employment was terminated without a stated cause and if there was real suspicion of a code violation, then mediation would take on a sense of urgency due to the financial hardship experienced by myself and my family. This did not happen. Instead, the attention was drawn to the issues of legal jurisdiction, with the respondent recommending I

pursue a civil case for wrongful dismissal. In reality, the commission's efforts amounted to sending a letter that prematurely ended its own mediation process.

And to add to my concerns regarding this event was the popular notion that perhaps the respondent was quite satisfied with the process, since the delays of months or years cost the accused nothing. It's a clever opening strategy.

Now, imagine for a moment my thoughts after receiving this letter last year. First, I was encouraged by many francophone supporters to file a formal complaint with the commission—something I have never done before—which, I am told, has the authority to reinstate me if indeed there was a code violation. Instead, I get a letter that implies, "Salut, bye-bye, see you next year." I would have to face the grim reality that I could be unemployed for a very long time. For what it's worth, federal government unemployment insurance provides me with a benefit of less than 20% of my previous salary. When I informed the commission that I was the sole provider to my family of six dependants, I was treated with indifference. This is not the Human Rights Commission that I imagined.

Since receiving the letter, I have waited nine months without word of progress. I recently inquired into the status of my file with the commission's office in Toronto and was told that it's customary to have to wait, on average, one year for investigations to start. They also reminded me that there was a good chance that my case may never be investigated if Bill 107 passes with the plan to abolish the process in the future.

Anyway, crying aside, one of my suggestions is that more resources should go into mediation and encouraging early face-to-face dialogue between the two parties involved in a claim handled by the commission. I also recommend using incentives to promote discussion and, in the very worst cases of outright intransigence, using progressive fines to discourage organizations from exploiting the goodwill of the commission and Ontario taxpayers.

I also wish to go on record as advocating official commission investigations, but restricted only to special circumstances. An example could be where there are allegations of a code violation involving a collaboration of those in authority within a large organization. Sometimes only an inquiry-style investigation can uncover the real source and extent of racism in the workplace. Furthermore, the evidence can be very useful in case studies to support education programs in the future.

I have presented my main points and now I would like to share with the committee—my wife recommended it—a small piece of cultural wisdom I learned while spending many years mediating business disputes in Asia. I'm sure the committee members might find some points useful in the context of human rights.

My primary responsibility when I was over there was overseeing the creation of joint venture partnerships on behalf of American enterprises. It was quite the challenge balancing Western and Eastern business values, and I

often experienced instances where cultural misunderstandings led to complete breakdowns of negotiations. For example, in one situation I remember, an American executive was trying to explain to his Korean host his banker's need for a formal written contract. The Korean, himself the chairman and owner of the business, responded by quoting Confucian traditions and the value of building relationships first.

As a rule, in the Orient, there can be a real aversion to legal contracts when it is between two culturally different groups. This is mainly because the good spirit of any agreement tends to be lost in translation. For this reason, the Korean chairman requested that contractual negotiations be postponed until he would feel more comfortable with the American businessman. The immediate reaction of the American was to question the validity of this relationship-centered tradition and insinuate that the chairman was up to some sort of trickery to buy time. For what it's worth, a delay to build relationships is so frequently complained about by weary, frustrated American businessmen that it's even given a name: It's called the 1,000-day rule. In other words, it can take 1,000 days for Asians to feel comfortable enough to become true customers or partners with Westerners. You hear it everywhere you go.

How was I to reopen discussion and negotiations? Wait another 990 days? In this situation, I had to use the strategy of fast-tracking cultural awareness on the American. This meant that if he wanted to reopen talks, he must learn to control his natural impulse to challenge the comments of a person in authority, like the chairman he had recently met, and more importantly, he had to observe the Oriental tradition that, in any discussion, an elder has an inherent right to be wrong. In fact, there was nothing to be gained by openly questioning the chairman's verbal request that more time was needed to develop mutual trust before entering into contract negotiations.

1140

I refer back to my claim with the commission. I often use this Asian experience to remind myself that regardless of my former boss's mistakes or errors in judgment, such as when he ordered my dismissal, he has a human right to be wrong. After I accept this right to be wrong, so to speak, I must move on, not in the pursuit of vengeance but instead in the patient pursuit of progressive understanding, specifically, an understanding that everyone's true motives must be revealed before a resolution to a conflict can be achieved.

So I tell this story about 1,000 days of patience and the right to be wrong mainly because, in a case such as mine that is complicated by bilingual and bicultural issues—and there are many in the organization I was involved with—an approach to mediation may have to be considered that is more relationship-centred, similar to my experiences in the Orient. What I am hoping here is that the Ontario Human Rights Commission maintains a clear procedural flexibility that is very distinct from our civil courts, despite what's being contemplated in Bill 107.

I would like to conclude by recapping my main points. First, due consideration is given to legislation that focuses more resources on the mediation process geared towards encouraging open dialogue over legalistic-type written communication, especially where you are involved with issues of racism. When you start writing things down, that gets into some big difficulties. Second, that the investigation process be always available as a tool to uncover widespread violations of the code, which can be used to support the educational objectives of the commission.

Lastly, I pray that all parties involved with the Ontario Human Rights Commission observe that unnecessary delays can victimize children, and every effort should be made to expedite the claims process when family income is at stake.

That's my official version. If you have any questions, I'd be happy to answer.

The Chair: Thank you very much. We have about three minutes each, starting with the government side.

Mr. McMeekin: First of all, thanks very much. Your wife was pretty close. You were about 10 minutes and 50 seconds. But given that you talked about the importance of relationships rather than being legalistic, I just footnote that as a piece of humour rather than any critique. I enjoyed your presentation.

I want to ask you the same question I asked earlier. You obviously have had a variety of experiences, some of them intercultural, which I found fascinating. If there were three specific things, Mr. Pocklington, that you would like to see changed in this legislation, what would they be?

Mr. Pocklington: The mediation process, as far as I was concerned, was everything. Of course, I was disappointed by the fact that it started off at the beginning all hot and heavy and then just died. And it seemed to have just died over a legalistic issue.

Mr. McMeekin: Very arbitrary.

Mr. Pocklington: Yes, arbitrary. I wasn't involved in the process. You're talking about changes. Well, there was one. There was no need. All of a sudden they're telling me it's going to investigation. Why? Why now? Again, legalistic arguments. I think that that has to be looked at by the committee, how many cases are rushed into investigation because they fail certain criteria and for what reason.

When I get back to mediation, talking about changes, I think where you get into issues of racism—you see it all the time in any large organization, where people say things out of frustration, the wrong words come out of a person's mouth, and the next thing you know someone's being accused of this or that on the shop floor and now there's another case that's going before the human rights. It just seems that perhaps more of the effort should be put into getting these people together and working out some kind of a settlement—compromise resolution rather than starting a whole investigation.

I can see the need for investigations, but I do also speak from my own experience in that there is a power

that goes with the investigation, and it's the power to disrupt someone's life and make things miserable. If there's an investigation ordered of a company, it's a lot of grief for that company, and there is a little bit of vengeance involved there. I have felt that myself, wanting to do that.

One has to remind oneself that—you know, whose money are you spending here? There's that balance. "Balance" is an overused word, but I always tell myself, "You have to answer to those whose money you're spending."

The Chair: Thank you very much.

Mr. Pocklington: You can't turn around and say, "Hey, I'm going to order an investigation here and have them come in and they"—I'm sorry.

The Chair: Thank you. Time's up. The official opposition.

Mr. Runciman: Thanks for appearing, Mr. Pocklington. I wasn't clear on the status. You filed a complaint. You went to mediation. There was not an investigation prior to the mediation?

Mr. Pocklington: No, it was the early mediation. I don't know the normal process, but mine was—

Mr. Runciman: How long did it take from the time of filing the complaint to get to that stage?

Mr. Pocklington: A month or two went by—

Mr. Runciman: Pretty quick.

Mr. Pocklington: It was very quick, I felt. The letters went back and forth, and then, as I said, I heard nothing for two months. I heard nothing, and then all of a sudden I get this letter saying that it's going to the investigation. I guess I'm caught in the hoop here because everything's on hold, so the investigation may or may never happen; I don't know.

Mr. Runciman: How long have you been waiting?

Mr. Pocklington: I got the letter in November of last year that it was going to investigation.

Mr. Runciman: November of last year, and no status report?

Mr. Pocklington: Zero. I eventually called them about a month ago, and they just said that it can normally take a year before they start, but it may not even start because of this committee going on—

Mr. Runciman: That's an interesting comment, because what you're suggesting is that people who have filed complaints may now be twisting in the wind, in limbo, because of this legislation, and that processes are not proceeding in perhaps the way they should be proceeding because of the possibility of this receiving final passage and royal assent and becoming law sometime later this year. That should be of concern to all of us, I would think, if that indeed is occurring, and we should at some point, if we have officials before the committee, pursue that point just to see what's happening within the commission itself, if it's grinding to a halt in a very slow fashion because of the legislation. That would not be treating fairly the people who filed complaints in good faith up to this point in time.

Your primary reason for appearing here is to recommend that we continue with the existence of the commission with more emphasis on mediation. If there's a challenge to any allegation, there is a responsibility at some level of the investigation, I would think, to try to determine the merits. I gather that you're suggesting there shouldn't even be some sort of a cursory investigation prior to entering mediation so we can argue the points with a mediator and try to make our case rather than, as you're suggesting, perhaps wasting taxpayers' dollars to go down this road before we at least try an initial mediation. And if that can't resolve the situation, then call in the investigators.

The Chair: A quick response.

Mr. Pocklington: In my case, it wasn't really a mediation. We all stated our positions in writing, and that got the wheels started. It very well could be that the company did not agree to a face-to-face mediation. I know I did, but I wasn't informed whether they did or not. They could very easily have said, "No, we just don't want to have a meeting. We do not want to mediate." That would be their right, and then everything stops.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: What I'm inferring from your comments is that in your instance there wasn't a very adequate communication to you of what you could expect stage after stage after stage. Is that fair?

Mr. Pocklington: Yes.

Mr. Kormos: Perhaps, Mr. Fenson, that could be yet one more of the things that we address if the committee supports my motion to invite Mr. Norton, Ms. Hall, management from the commission and commission staff in here to find out what standards there are. Quite frankly, your complaint is not dissimilar to some of the complaints my constituency office gets from people who have complained about lawyers to the law society. I'm confident the law society is monitoring this, so, Sheena, you don't have to call me about it; it's okay. We'll talk in September. Notwithstanding the best efforts, there still seems to be some difficulty with complainants and the law society in terms of understanding what the law society is doing. They operate in a very similar way to the commission. Right before it goes to a disciplinary hearing, the law society attempts to resolve the matter. They investigate, and indeed they will prosecute the lawyer if there's sufficient evidence. Is that a fair interpretation, Mr. Berardinetti?

Mr. Berardinetti: Yes.

Mr. Kormos: It's not an unworkable system, is it?

Mr. Berardinetti: I've never been part of it. I've just heard about it.

Mr. Kormos: Mr. Berardinetti is a lawyer. You're well aware of the law society functions.

Mr. Berardinetti: Sorry, Chair, I don't mean to interject here, but I get the monthly reports that come from the law society.

Mr. Kormos: And you've supported constituents, as I have, with their complaints with the law society.

Mr. Berardinetti: Of course.

Mr. Kormos: Thank you very much. I just wanted to ensure I was on the same page as perhaps a younger, more astute lawyer than I am.

Anyway, I appreciate it, Mr. Pocklington. That's something that we've got to put to these folks if we get them here from the commission, because that's a problem, and it's a problem that should be addressed. There should be clear standards—people have talked about standards before—for how the commission deals with this.

The other question would be about case management. You're probably familiar with that, either directly or peripherally, in terms of the various types of work you've done. I'm just drawing this inference that there isn't very good case management of these files; there may be, and it could just be bogged down by lack of resources.

Thank you very much for raising these points.

The Chair: Thank you very much. The committee now stands adjourned until 1:20.

The committee recessed from 1151 to 1322.

ARCH DISABILITY LAW CENTRE

The Chair: Good afternoon. We'll be resuming the hearings before the standing committee on justice policy this afternoon. For those of you who have just arrived, I'm going to read this paragraph due to the nature of the hearings.

For your information, to make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services are being provided each day. As well, two personal support attendants are present in the room to provide assistance to anyone requiring it.

To facilitate the quality of sign language interpretation and the flow of communications, members and witnesses are asked to remember to speak in a measured and clear manner. I may interrupt you and ask you to slow down if we find you're speaking too quickly.

With that in mind, our first speakers this afternoon are ARCH, a legal resource for people with disabilities. You may come up. You may begin.

Ms. Laurie Letheren: Good afternoon. My name is Laurie Letheren. This is my colleague Roberto Lattanzio. We're here representing ARCH Disability Law Centre.

ARCH Disability Law Centre is happy to be here today to express our support for the vision of Bill 107. This is an ambitious statute of broad application that has a most urgent goal: creation of a human rights process that works for all Ontarians who experience discrimination. ARCH supports the intent of this reform in that it provides persons who have experienced discrimination with the opportunity to have their experiences heard by the tribunal. However, in our opinion, Bill 107 needs to be significantly amended before it becomes law. This submission is not comprehensive or final. We will be making a further and more comprehensive written submission to this committee before the last day of hearings. We make this submission today to highlight some of the

key issues that we feel must be addressed before Bill 107 becomes law.

Let me begin by briefly speaking about ARCH Disability Law Centre.

The Chair: I'm sorry, I just want to interrupt to advise you you're going a touch too quickly for the sign language people. So if you don't mind just slowing it down a bit, please.

Ms. Letheren: Okay.

The Chair: Thank you very much.

Ms. Letheren: ARCH is a charitable, not-for-profit specialty legal clinic primarily funded by Legal Aid Ontario. It is dedicated to defending and advancing the equality rights of persons with disabilities, regardless of the nature of the disability. We have a provincial mandate. ARCH represents national and provincial disability organizations and individuals in test case litigation at all levels of courts and tribunals, including the Supreme Court of Canada, as well as the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario. We provide education to the public on disability rights and to the legal profession about disability law. We make submissions to government on matters of law reform and we offer a telephone summary legal advice service and referral service. ARCH maintains an informative website on disability law. Our membership consists of over 60 disability organizations and ARCH is governed by a volunteer board of directors, a majority of whom are persons with disabilities.

After reflecting on our experiences with the current human rights system in Ontario and hearing that other advocates had very similar concerns about the system, ARCH concluded that the current system is seriously flawed and does not adequately address the experience of discrimination of countless Ontarians. ARCH's view is that the problem with the current system is more than delay and a backlog of cases.

The ARCH board and staff support in principle the proposal under Bill 107 to move to a system where complainants would have direct access to a hearing. ARCH's view is that when the commission no longer has the job of screening individual complaints, it will be better able to fulfill its role as the public advocate and champion of human rights in Ontario.

Members of disability organizations have told ARCH staff that they discourage persons from filing a human rights complaint. They point out that the mediation and investigation process is stressful and disempowering, and their clients feel forced into accepting settlement offers that are not completely satisfactory because so few complaints are ever referred to the tribunal for a hearing. This is consistent with the information that we receive through our provincial telephone advice service and our community development work.

Many people believe that the most serious problem with the current commission is that it has the role of determining which cases will be referred to the tribunal for a hearing. The decision of whether a complaint is referred to the tribunal is made behind closed doors and

the commission generally gives very few reasons for its decision. The decision is based on the report of a commission investigator, and the complainant has no control over that investigation process.

On 6 April, 2006, ARCH interviewed Catherine Frazee, past chief commissioner of the Human Rights Commission, when she stated, "The commission is being asked to do the impossible. You cannot be performing the role of turning people away and still claim to be a human rights champion. It's entirely inconsistent. It sets up a dynamic that is doomed to failure." The entire interview was released in ARCH Alert, which is available on our website.

So how should Bill 107 be amended so that we have a fair and just system for addressing discrimination in Ontario? In our opinion, there are three things that must be embedded in the foundation of the new system if Ontario is going to succeed in establishing a system that truly works for all persons whose rights have been infringed under the Ontario Human Rights Code. We must have:

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(1) A properly resourced legal services centre that is fully accessible to all Ontarians and provides information, advice and representation throughout the entire human rights process;

(2) The development of expertise at the commission, tribunal and legal support centre. All those hired must have demonstrated involvement and experience in and a commitment to human rights. They must be recruited through an open, non-partisan competitive hiring process; and

(3) The commission, tribunal and legal support centre must be fully accessible to all persons with disabilities and must be committed to delivering barrier-free services. Persons with disabilities must be consulted.

When Attorney General Bryant first announced the reform of the Ontario human rights system, he promised that the new legislation would establish a system of full access to legal services for all, regardless of income. ARCH strongly supports this. However, Bill 107 does not contain any provision which clearly establishes a legal support centre. ARCH recommends that section 46.1 of the bill be replaced with the following language:

"(1) The minister shall establish a system for providing high-quality support services to any person who is, has been or may be a claimant under this act, and to provide information, support, advice, assistance and legal representation to those seeking a remedy at the tribunal.

"(2) The minister shall enter into agreements with prescribed persons or entities for the purpose of establishing this system of support services, and shall ensure that sufficient resources are allocated to the system to enable its functions to be carried out and to ensure that support services are available throughout the province.

"(3) The minister shall ensure that the services are fully accessible to persons with disabilities.

"(4) On an annual basis, a person appointed by the minister shall review the functions and operations of the

system and shall advise the Legislature as to the sufficiency of the resources allocated to the system, the functions assigned to this system and the range of individuals who have access to the services provided."

Thus, the human rights legal support centre must include the following:

—no restrictions on eligibility for services;

—the provision of free quality legal services by trained human rights lawyers at every stage of the human rights process;

—the provision of free initial advice and information to callers who are considering making an application to the tribunal;

—physically accessible satellite offices and a system in place to ensure that the services are available throughout Ontario; and

—guaranteed allocation of sufficient resources.

In addition, ARCH recommends that the legal services centre should be designated the first point of contact for all persons who believe that their rights have been discriminated against under the code.

As we have stated before, it is our opinion that the development of the tribunal under the new system should be built on the premise that the tribunal will be an expert decision-making body. It is our position that if all claimants are provided with representation from trained human rights lawyers, the tribunal will be better able to fairly and effectively resolve matters before it and develop its expertise, and claimants will not face alone the challenges created by formal and complex procedural rules and practices. The publicly funded legal service is of crucial and utmost importance to making these reforms work. Thus, the right to such services needs to be explicitly legislated.

The commission, under Bill 107, will focus on prevention, public education and policy analysis. In order for the commission to exercise this role effectively, ARCH recommends that its functions should be expanded to include the right to conduct inquiries and investigations in addition to "reviews." ARCH recommends that the commission have the full right to make applications and the power to intervene on applications at the tribunal when the commission itself is of the opinion that it is in the public interest to do so. It is also important for the commission to have full investigative powers in exercising these functions and to have the means of enforcing co-operation with investigations.

Section 31 of Bill 107 proposes the establishment of a Disability Rights Secretariat "composed of not more than six persons." We must be practical and realize that the government will not have a largely expanded budget for the new commission. It's ARCH's concern that there will not be enough funding for both an adequately funded secretariat and a commission to serve persons who may have experienced discrimination on other grounds. When considering the need, effectiveness and possible impact of a Disability Rights Secretariat, it is important to keep in mind that disability continues to be the leading ground of discrimination cited by human rights complainants in Ontario.

It stands to reason that the development of knowledge and expertise within the commission with regards to disability issues should take place throughout the commission and inform all the work of the commission. It may be detrimental to compartmentalize disability apart from other grounds. This becomes more evident when we consider discrimination taking place on more than one ground, that is, the intersectionality of grounds of discrimination such as race, age, family and disability.

For example, the commission inquiry into the impact of the Safe Schools Act revealed that a disproportionate number of black students with disabilities were impacted by the policies of the school boards. It's essential that the work of the commission always consider disability as it impacts other areas.

ARCH recommends that the section proposing the establishment of the Disability Rights Secretariat be completely deleted from Bill 107. Instead of a separate disability secretariat, ARCH recommends that the composition of the commissioners should reflect the need to have at least 50% of its commissioners with a demonstrated experience in disability issues.

My colleague Roberto Lattanzio will now discuss issues of reforming the tribunal under Bill 107.

Mr. Roberto Lattanzio: It is essential for the government to ensure that all tribunal processes are fully accessible to all Ontarians and that rules of procedural fairness are applied throughout the process of resolving a claim. Surely, of all of the tribunals in Ontario, the Human Rights Tribunal should be barrier-free and it should declare clearly that persons with disabilities have an entitlement to barrier-free services.

An accessible process requires that all barriers at the tribunal, including barriers to accessing its physical spaces and barriers to information and communication, its policies and practices, be identified and removed to ensure full accessibility. There are currently many barriers, including attitudinal barriers, which persist. For example, there is currently no transcription or tape recording of the proceedings at the tribunal or automatic provision of accommodations such as real-time captioning. The onus is on the claimant to request the needed accommodations, which can be at times difficult and confusing.

Currently, the tribunal has no obligation to be proactive with regards to barrier removal and accessibility. Although the tribunal may be responsive when accommodation requests are made, ARCH argues that the process at the tribunal should make it unnecessary, as much as possible, for individual requests to be made. A claimant may not be aware of tribunal processes, and hence not be aware of the accommodations that she may need in accessing them, and may therefore not request the necessary accommodations in advance. The human rights process is complex, emotionally draining and difficult to follow for a layperson. The added difficulty of getting needed accommodations exacerbates this.

Our recommendation is that the onus should be on the tribunal to ensure that all accommodations are in place

once a person's disability has been identified. One possible way of achieving this may be for the tribunal to have a system where accommodation needs are identified at the initial application stage, and a case file manager would then ensure that the claimant's needs are accommodated.

ARCH recommends that a provision addressing accessibility be legislated and that the following be added to section 37: "The principle of accessibility will have primacy over concerns of efficiency and expeditiousness of the tribunal process."

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In addition, ARCH recommends that accessibility also be included in section 34(2) of the bill, which sets out the key areas that the tribunal's rules of practice may address. We recommend that the following language be adopted at section 34:

"In making rules governing the practice and procedure before it, the tribunal must prescribe practices and procedures to ensure full accessibility throughout its processes."

I would now like to talk about section 41 of Bill 107, which deals with the early dismissal of applications by the tribunal. This provision provides for the dismissal of complaints "without a hearing" in whole or in part. Currently, as this bill reads, an application can be dismissed without any notice or any opportunity for the exchange of submissions or arguments.

First, ARCH recommends an amendment to section 41(1) to capture what we believe to be its true intent by inserting the words "full hearing on the merits" in the place of the word "hearing."

Unlike the current code, Bill 107 provides no right to make a request that the tribunal reconsider its decision to dismiss an application. ARCH recommends that this right be maintained.

It is our opinion that protections, therefore, must be clearly legislated. Such procedural safeguards should include a requirement of notice to the applicant, a full exchange of the opposite party's submission, an opportunity to make submissions to the decision-maker and the receipt of full reasons for the dismissal.

Lastly, under this bill, the tribunal can dismiss an application if it is of the opinion that another proceeding "has appropriately dealt with the substance" of the application. In making such a determination, ARCH argues that the tribunal must consider a number of factors, including the remedies awarded, the substance of the settlement that was reached and their inadequacies. Parameters must therefore be set out in the legislation.

I realize we're running out of time, so I would just quickly like to talk about section 45, which is the privative clause. Bill 107 removes the appeal provision. I won't go through my notes as it will take a little while, but we talk about the privative clause in our ARCH Alert article.

These are our initial thoughts, as Laurie mentioned earlier. Again, our ARCH Alert article discussing these issues was provided to this committee. We will submit a

final written submission to this committee before the end of public hearings, dealing with this bill more comprehensively. If there are any questions on these submissions or if any further clarifications are required throughout your deliberations, we would be happy to assist. Thank you.

The Chair: Thank you very much. There are 45 seconds each, or close to that.

Mr. Zimmer: Can you, in a nutshell, just set out your reasoning why you think there should be a privative clause? I see it's on page 17 in your ARCH Alert.

Mr. Lattanzio: That's right. Really quickly, following our line of reasoning about expertise and building expertise at the tribunal, having a privative clause would ensure this. However, we're cautious of this. Of course, we're cautious of the extinguishing of important rights, such as the right to appeal. So we would argue that we would support having a privative clause only in the backdrop of assurances that expertise would be built into the tribunal. That would mean that members are appointed mainly on their expertise and so on, that there would be things in place to ensure that expertise was built into the tribunal process.

About that provision as well, the latter part of that provision talks about the standard of patent unreasonableness. We have some concerns about that as well, as it limits the standard of review in a judicial review application, so—

The Chair: Thank you.

Mr. Lattanzio: I can ramble on about this one.

The Chair: Mrs. Elliott?

Mrs. Elliott: In the beginning of your presentation, you indicate that you have support for the vision of Bill 107. But your paper also indicates pretty clearly that you have some very substantive concerns about some of the measures here—fundamental issues, really, I would say—with respect to the legal support services, the operation of the commission, the intersectionality issue that you mentioned. Your recommendation that the secretariats be eliminated—wouldn't it seem to be more important than ever for the commission to retain some of its ability to investigate some of the individual cases because they are so intertwined with the issue of systemic discrimination?

If I could ask you both questions, my second question is with respect to the tribunal.

The Chair: You're going to have to make it brief.

Mrs. Elliott: Okay. The tribunal does have the ability to dismiss a complaint without a hearing, potentially putting a person in a worse position than they are under the present commission, because at least with the present commission they have the ability to have someone help them present their case in the best possible light.

Those are my comments. I'd appreciate your response.

Mr. Lattanzio: I would love a lot of time to answer that.

The Chair: Very briefly, because that's a long 45 seconds. We're going to have to move on. Maybe if you want to—

Mr. Lattanzio: Perhaps what I can do is refer you to our ARCH Alert article. We do talk about investigation, and the commission should be able to investigate even individual complaints. We do talk about the tribunal and how there should be safeguards in place before the tribunal dismisses an application.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you, folks. I am fascinated by lawyers arguing for a privative clause when, by extension, one could say that if we really want to improve the quality of our provincial court, criminal division, we should make it very difficult to appeal from decisions made by provincial judges. Some people would find that a wonderful proposal, wouldn't they, Mr. Runciman? That way, we create greater deference, inherently, for that provincial judge's ruling and we cultivate more expertise in the criminal bench. I can't think of any of my civil libertarian colleagues who would endorse such a principle. Why in this case? Why is it applicable here when there are such important things at stake, but not applicable in criminal law, or family law for that matter? We could make the system so much easier if we simply eliminated appeals, couldn't we?

Mr. Lattanzio: If I can answer that, this actually occurs in many tribunals: in labour arbitration, workplace injury and so on. At the moment, for example, a remedy is awarded by the tribunal, and the claimant has to wait years and years and years to then actually receive that remedy. What we're proposing—although we'll make further, more detailed submissions on this—is not a full privative clause but basically—well, depending. Like I said earlier, the extinguishing of appeal rights is something to be taken extremely seriously. This is something we'll have to balance, but we want to balance a building of expertise and ensuring—

The Chair: Thank you very much.

PENNY LECLAIR

The Chair: Next up is Penny Leclair.

Ms. Penny Leclair: Good afternoon. It is always a pleasure when the government allows for the participation of people in a process where the people are the ones who will benefit or be harmed.

It's unfortunate—in fact, it's more than unfortunate—that there was no public consultation; we just go straight to a hearing. In other words, the government thinks this bill is so good that there isn't cause for public consultation. Well, from what I've heard this morning—and I'm not going to repeat a lot of stuff I've heard—I've been educated. I wish I could be the one sitting on this committee asking some questions; I have about 10 for every presentation being given. If we had public consultation, we would have that opportunity to understand the bill. As it sits now, I've read it; it's a vague piece of controversial documentation that doesn't tell me very much. How would my life change if this thing became law today? I'm not convinced my life would be any better.

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I'm an individual, but I do belong to many organizations. But I prefer to speak on behalf of myself and as a person who cares about other disabilities and about people not being discriminated against more than once, and that if a process allows someone to be discriminated against, the solution will allow that the next person will not be discriminated against. As this process sits right now—not the bill, but the process of human rights—the biggest problem is the fact that it simply allows for individuals to be paid off and pacified, but it doesn't solve real problems.

I'm an individual who belongs to organizations like the Canadian National Institute for the Blind, the Canadian Hearing Society and the Canadian National Society of the Deaf-Blind. As a member of these organizations and the ODA, I work with other people who have disabilities. We work together; we don't work against one another. The government assured that we have a better ODA, but they're taking away the very tools that make that happen.

I'm an individual who doesn't often speak out and I definitely know very little about human rights, but I learned a lot when I heard what people were saying, so I tried to read the bill and understand. I don't know the terminologies, but I am a person who last year filed a complaint, who last year settled my complaint by the mediation process. I want to tell you that wasn't a very pleasant process, not because of the commission but the fact that the city of Ottawa discriminated against me and I had to go to the Human Rights Commission because city council wouldn't change anything. In fact, two councillors told me, "Penny, we will change when the commission tells us we have to." Isn't that nice?

That's what discrimination is. That's what we deal with on a daily basis. That's why we keep seeing the same thing happen again and again. It's because people think it's okay to discriminate as long as you don't do it in a very mean way: Be nice about it, but you can discriminate; it's okay. This bill tells me that it's still okay. In fact, it's even better, because there's so little in this bill that would give me any reason to believe that it would be different. So it's controversial.

We need the right to public investigation. Let me ask the members of the committee something. If Christine gets harassed and wants to press charges, does she not go to the police force and get the police force to investigate? The commission is the same thing to me and my rights as the police force is to you, and yet you want to take it away. You want me to go and find my own way to do an investigation when the police force has the expertise.

When I went through this process, I thought it was just a person or a group of people—city council—who discriminated against me. It was the process and the investigation that helped me learn that they knew they were doing something wrong, so their lawyers went looking for something that would justify the wrongdoing. They dug out a policy and showed me, and sure enough the

policy was discriminatory, but that's the policy they followed. That's the kind of thing that happens.

Christine would have the police force and the investigation process of that police force. That's the beginning, and then there's more as she presses charges; she's going to continue on. So the remarks made earlier today about doing away with some of this "uncomfortable" process—it's going to be uncomfortable to begin with, because it's not pleasant to be discriminated against and it's not pleasant when people treat you like that and they stand up and they justify their treatment by policies. I don't care about your policies. How does that feel? I wish you could be in my position.

We have to uncover the causes and the only way to really do that is through the investigation process, and as we go through it, we move from being subjective to being very objective. We take away from the personal feelings and we get involved with the facts of the situation, and the facts are the ones that tell the story. It doesn't matter what you said, it's the facts.

So 57% of people went to mediation and I was one of them. I go in and the city has a high-level official and he has a lawyer, and it was only me in that room and a staff person to make sure that we go through this process. When I said earlier that when you have this process—and what is being recommended or being offered to me isn't something that would help other disabled people. I was asked to maybe consider, "We'll give you what you wanted but it's just because we didn't realize you had so much to offer." I stuck to my guns and I said, "I want the policy changed." They said, "But Penny, we don't have to change the policy. We'll just allow you to do what we said you couldn't because we're sorry. You really are more intelligent than we thought." That was a slap in the face and I said, "No. I want the policy changed."

If I didn't have the tribunal, I could never have gotten my situation resolved. They weren't going to change the policy because it would have meant that they were going to have to do the same for people in that situation. Now that policy is changed, and it was a process. But if I didn't have the tribunal, if I didn't have that power—and I could sit there myself and say, "Okay, you don't want to change the policy. Then I guess we're finished with mediation, because I'm not settling for less than the policy. I don't want anyone else to have to come and sit in this room and feel really uncomfortable about you and your lawyer and high-level people, when you know you've done something wrong."

And it's so hushed up. It's very hushed up. When you do something wrong, you steal something, your name is in the paper; you feel the embarrassment. Do you know what happens to people who go to the commission and they have it resolved? Nothing. The public doesn't know what the city did to me. Nobody knows about it. There is no embarrassment. The mayor is not embarrassed that he discriminated against me—nobody even knows about it—and I am not really allowed to tell the story that much because I reconciled it. Now I'm a wonderful number in

the books of the 57% of people. Yes, I did, but it was because of my personality. If I had put most people into that room, they would have settled for being nice to you and giving you what you wanted and being told you're smart. I wasn't going that route, and I didn't. But that's what most people with disabilities would do.

The mechanism for the appeal process is something that is important. It's important in this process, as it is in any other. Even at the tribunal level, we have to be able to appeal it further to another court. The reason is because the lawyers and the commissioners can and do make mistakes. Why can't we admit that? Why can't we as people say, "You people may make a mistake? And just in case you do, we need that appeal process, in the same way we need it for civil law and in the same way we need it for international law." It's no different. Stealing is no different than discrimination. It's wrong. It has to be improved and it won't be improved if we're going to sit around and dip our fingers into soft, gooey stuff. We have to get hard-nosed about it. This government was going that route with the ODA and now it's turned completely 180 degrees going the other way. I'm not impressed.

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The current bill has addressed the issue of trying to make things go smoother and improve the time involved, but improving the time, unless you have real things happening—I can make beautiful numbers, but what actually happens isn't logical; people are still being discriminated against because real things didn't change. So having 57%—those are only people who were brave enough to go to the commission. That doesn't mean everybody who is discriminated against is going to the commission. I almost stopped going three or four times because I felt awful taking on the city of Ottawa. This is the city I live in. Why should I have to take on the city over something fairly basic? A lot of people back off. The 57% who get some kind of resolution through mediation could be a lot higher. But that mediation process, we should know what ended up. Was it really resolved or was it just people being pacified? The reason they're being pacified means we're going to continue to see the same thing over and over and over again. It doesn't get put into newspapers; nobody knows about it. That's another reason why it happens over and over again: There's no embarrassment involved here, as there is with other legal considerations.

Power to the people. Do you believe that? This bill doesn't give people the power. It doesn't give me any power. I wouldn't be able to say that no, I wouldn't settle for something, because I wouldn't know whether or not the commission would take it on to the tribunal. So I'm going to lose power. Power to the people: That's the way it's supposed to work, but it's not going to work with this bill if it goes through. That's what democracy is; it's power to the people, not to a group of people who may consider themselves to be experts. I want to be able to use a fully investigated process so that every time I say that, you think about your pocketbook. It's going to cost

you if you have to do a brief. So therefore if I keep pushing and I know that you've got that cost or that economic factor, that's power and I can use it. And why shouldn't I be able to? But we'll lose that if we go the route of this bill. It's unfortunate.

On behalf of so many people who don't understand what's going on, who don't understand what will happen to them if they have discrimination against them, to the many, many, many people who never will go to speak out about what happens to them because it's a long process, and because it's long, it's intimidating—you'll always get those people. But we need to do something today so that fewer people are discriminated against. Discrimination is just like breaking traffic laws. It happens every day and it will continue to happen every day, but it certainly will happen less often if you take it seriously enough and put some real, hard-nosed ammunition, I guess you'd say, behind the Ontario Human Rights Commission.

I moved from BC and I'm glad I did because they've only got a tribunal and their tribunal is not working very well. I am proud to live here in Ontario and I am proud that I have the opportunity to address some people who may be able to do something. I will not be happy if the government can't listen to reason for the sake of money, for the sake of saving some dollars, when discrimination isn't getting better. It's improving, it's taking baby steps, but until the government really decides to get behind it and put some real money behind it—you've cut costs.

If I have a human rights complaint, I have someone help me fill out those forms, because they're not accessible on the website; I can't fill them out. Not only that, I didn't know the jargon. What's a complaintiff? What do these terms mean? Nobody tells you that; you're supposed to know it. So I had someone help me do that. Last year, it was cut in half, so by the time my complaint was registered, it was about three months after I actually started the process, because those people are overworked. The date shown isn't the date I actually went; it's about three months after I had told them about my situation. So we cut and we cut and we cut. But what are we doing to the lives of people when we do that? It's not a nice story; it's not the way I would like to see this community go. It's not a respectful way for citizens to be treated.

Thank you very much for your time and for listening. I've learned a lot in this process. I've learned a lot from ARCH, just before me, and some of what I said I probably would have said differently because I didn't have a chance to really think about what they were saying. But it's an interesting process for anybody to participate in and to be actively involved in. It's through exchange of ideas that we come to improve a system, as the consultation does. In a hearing, I don't get to ask any questions. It's not consultation; it's not the same thing. We should have the consultation back. This is not a consultation; it's a hearing.

The Chair: Thank you very much. You were right on; you used all your time. There won't be any time for questions.

BROCKVILLE AND DISTRICT ASSOCIATION FOR COMMUNITY INVOLVEMENT

The Chair: The next presentation is from the Brockville and District Association for Community Involvement. Good afternoon. You may begin. Before you start, if you could just state your names for the record.

Ms. Audrey Cole: My name is Audrey Cole. I'm a past president of the Brockville and District Association for Community Involvement. My colleague is Beth French, the executive director of the association. I'm going to ask Beth to start the presentation and then I'll continue.

Ms. Beth French: The Brockville and District Association for Community Involvement came into being in 1956 to address blatant discrimination. The association was formed by local parents of children with intellectual disabilities who, because of their disabilities, were denied access to that most important developmental phase of a child's life, a formal education. Ontario law at that time did not provide for the education of children with significant intellectual disabilities. The law was in fact written in a manner that clearly excluded them. Like thousands of families in this province and across the country, those parents set up their own school. They raised the money by bake sales, by selling flower seeds and by any means available to ensure that their children not be denied the right to go to school. It was 30 years before the provincial government finally enacted a law that guaranteed that right by requiring school boards to provide for the education of all children within their jurisdictions. The guarantee of its citizens' rights is certainly a slow process in the province of Ontario.

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BDACI is a local affiliate of the Community Living Ontario federation and a local member of the Canadian Association for Community Living. In its agency role of family support and coordination, BDACI assists 109 families with children under the age of 18, and 53 families with adult sons and daughters, and all of those individuals living in the family home. The support provided is individualized. Issues of dignity, respect and equality are key to ensuring the right of those children and adults to enjoy the fruits of inclusion in the life of their home communities.

This year, BDACI celebrated its 50th anniversary. Its membership continues a long tradition of speaking out for the rights and well-being of people with intellectual disabilities. It is for that reason that we appear today before the standing committee. We have concerns that Bill 107 has flaws. We fear that the bill, were it to be in force without amendment, could in the short term be inadequate to ensure optimal protection for the province's citizens.

It is not our intent that this be an exhaustive brief. Much of our reason for concern is shared by others involved in issues relating to disability who will be bringing or will have already brought those concerns to

your attention. BDACI's intent is to highlight key issues that it sees as the most critical for people with disabilities and particularly those individuals and families it supports. Of particular concern to BDACI are matters relating to the sons and daughters of aging parents.

On that topic, which we will come back to later, we have a couple of particular concerns. One, these aging parents are individuals who have fought to build the Ontario that we have today and the kind of supports and services that people do enjoy, including the kinds of benefits that the Human Rights Commission would provide, and they find themselves in the situation where they have no promise of adequate supports for their sons and daughters were they to be no longer here, which is an inevitability. Secondly, there also is no provision for supported decision-making for their sons and daughters. That's a point that we'll come back to later that's quite relevant to Bill 107.

It is not at all clear to members of BDACI that Attorney General Michael Bryant's belief that enacting the Human Rights Code Amendment Act in fact "would strengthen Ontario's Human Rights Commission" and "improve access to justice for those who have faced discrimination and increase protection for the vulnerable" to the degree implied by his words.

It has been our observation that for some years now there has been need probably for reform and certainly for increased resources for the human rights system in Ontario. Although our direct experience with the work of the commission is dated, that experience engendered within BDACI a continued interest in Ontario's human rights system. It is against that experience that we have tended to measure its progress or otherwise over the years.

Twenty-four years ago, three Brockville area families, all members of BDACI, filed a complaint under the Human Rights Code. The three children of these families were denied access to a Catholic education by the Catholic school board, which was prepared to purchase educational services for those children from the public board but not to provide service within its own elementary schools. The families believed their daughters should have the same opportunities as their siblings for a Catholic education. Although in the considered opinion of the human rights system there had been discrimination, the school board appealed and that decision was overturned by Divisional Court in 1987.

Members of BDACI learned many things from that experience, including:

- that a complaint represents a massive investment of time and an emotional drain that most people with intellectual disabilities and their families can ill afford. Although the families appreciated the support of the commission staff, they simply could not have survived the long-drawn-out and arduous process had it not been for the personal support they received from their fellow members of the association, association staff and friends;

- that the results of the human rights process must be timely to be relevant to the claimants. Irrespective of the

final outcome, those children were already in high school by the time it was reached;

—that appropriate publicity and public recognition of the issues can be of greater value than the complaint itself. Although the Catholic school board had not been obliged by the process to accept the children with intellectual disabilities, it has since that time made extraordinary efforts to accommodate children with disabilities no matter how severe or complex their personal needs; and

—that, aligned with the above observation, individual complaints, given appropriate emphasis, can have quite a positive systemic effect, sadly, of course, at tremendous personal cost to the individuals who pursue the issue.

Ms. Cole: We're also concerned that perhaps our brief hasn't captured the issues with sufficient clarity, and we would like to reserve the right to do a final brief within the next few days to pick up the things that we think we've missed.

The problems faced by people with disabilities aren't individual problems at all; they're societal problems, and they can't be fixed by an individual complaint on an individual complaint basis. None of us would live long enough to see the world change if we had to do it solely on a complaints basis.

Although we believe that Bill 107 has some flaws and that the current system has even greater flaws, we welcome the opportunity offered in the bill for the commission to reinvent itself. A new kind of commission with a vision of a sharing and caring society and with the necessary resources to make things happen can lead Ontario to the point where eventually it won't ever need a Human Rights Tribunal. But that said, in the meantime we have to deal with the situation as it's presented in the bill.

One of the things that concerns us very much indeed is the fact that although the Attorney General talked about the reformed system being based on three pillars, one of which would be the revised commission—well, the reorganized, reinvented commission—and one would be the improved tribunal system, from a reading of the bill, we get no idea, no sense whatever, of the shape, substance or potential stability of the third pillar, which leaves us not only with the probability of an unstable system—wobbly legs, wobbly pillars—but also no legislated assurance at all, as had been promised, that appropriate legal support would be available to those who have been subject to discrimination or other human rights abuse in the process. In our opinion, that support is critical, and the three families referred to previously would certainly attest to that.

To our non-legal eyes, the proposed section 46.1 falls far short of a legislated commitment to the real, accessible and consistent support that individuals and families supported by BDACI would require were it necessary for them to approach the tribunal. The notion of going before the tribunal is intimidating. We've heard something about the intimidation of this whole process in the previous speaker. But without such support, it would be hardly possible.

Talking about the possibility of some kind of centre—by regulation or however it might be put in place—to people in small-town eastern Ontario, as we are, sounds like something obscure and far away. It seems to us that the legal and associated support that's needed must be more broadly distributed and more readily accessible than is implied by the term “centre,” and entitlement to the appropriate support has to be entrenched right in the legislation. Its provision can't be subject to the whims of political interest and expediency.

We are concerned—and this was referred to by ARCH previously—about the makeup of the commission. It seems unfortunate that Bill 107 is silent on that because we would agree with ARCH wholeheartedly that because we know the majority of complaints relate to disability issues, it seems to make common sense that the commission has to consist of at least a majority of people who understand not only fundamentally the issues of human rights but particularly issues related to disability. From our 50 years of experience in our association, we suggest that there has never ever been a time when people with intellectual disabilities were not vulnerable to discrimination and didn't meet discrimination almost on a day-to-day basis.

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When we say that the commission has to have that kind of makeup, we also imply that it would mean the guaranteed provision of all the necessary support to enable participation, including participation of people whose voices must be heard by other means than spoken or signed or printed-out language. It's our experience that the more severe the disability, the less the expectation by others of both the right and the capacity to participate. That in itself is a form of discrimination. We also find ourselves totally opposed to the notion of a disability rights secretariat. The kinds of functions that we see in the bill relating to the secretariat are very well and ought to be, clearly, the functions of the commission. We need commissioners, not secretariat members, who gain the kind of knowledge and expertise in disability issues that are implied by those functions.

Also, the fact that subsection 31(4)(c) will subject the proposed secretariat to performing tasks and responsibilities prescribed by regulation sends the message that that body, that secretariat, were it to be in place, could take on a life of its own, should the political masters of the time so desire. That's inappropriate for a human rights commission.

We are forcibly reminded by the notion of this segregated secretariat of the attempt in Ontario by the Ontario government of the day to bring in a segregated Human Rights Code for people with disabilities about 25 years ago. Those of us with long memories will probably remember it. Despite attempts by Community Living Ontario in the 1970s to have intellectual disabilities put into the code, the government was willing only to include physical disabilities. In November 1979, there was first reading of Bill 188, An Act to Provide for the Rights of Handicapped Persons. It was the government's pragmatic

response to a political problem. Unwilling to risk opening the code to amendment, thus providing opportunity for the opposition to force inclusion in the code of age, sexual orientation and such things, the government devised a separate bill for people with disabilities.

On December 6, just a few weeks later, a coalition of over 60 disability organizations held a press conference in Queen's Park opposing the bill. The bill was withdrawn, but many of us felt at the time that the government had simply caved in to publicity while failing to understand why a separate disability system was so upsetting to those groups. But the point is that "separate but equal" is as "inherently unequal" today as it always has been. As with a separate code, we fear that the separate secretariat would actually diminish the equal status of people with disabilities. We sincerely recommend that section 31 be deleted. It's not in the interests of people with disabilities.

The enhanced role for the commission: Members of BDACI really welcome the opportunity for the commission to enhance its previous role and to become a true champion of human rights, thus expanding in Ontario and probably the country the horizons of human rights understanding. We see the commission as having the opportunity, for example, to look beyond the obvious and see the detrimental and discriminatory effects of practices not currently within the human rights purview.

One example of particular importance to many families, particularly families of people with disabilities of genetic origin, is the apparent inability of practitioners specifically and society in general to see the human rights implications of certain biomedical practices. On the one hand, we have a statutory human rights system predicated on respect for the dignity and worth of all people, and designed to protect a person with Down's syndrome, for example, from discrimination on the grounds of intellectual disability and, on the other hand, we have a statutory health care system which mandates certain tests and invests considerable resource in practices aimed primarily at eradicating such conditions, in effect, such people. The message here is devastating to the image and presence of people who live and thrive with such disabilities of genetic origin. To families, the consequences of those practices can only be seen as discriminatory.

As previously implied, we have no sense from the bill of how we would support those people in the meantime, while our new Human Rights Commission is helping us to learn how to change society so there will be no discrimination. In the meantime, we have to deal with the fact that all we would have will be the complaint-based process. But there's no real sense of how that's going to happen.

ARCH has suggested that there has to be provision for the person who can't go himself or herself to make a complaint, who can't actually file a complaint, and suggested that perhaps there have to be provisions for a third party to offer those complaints. We would support that notion, the idea of community organizations getting

involved in doing a third party complaint on behalf of the person who isn't able to do it themselves, because we don't see how else it would get done.

But there's a related issue for us that we wish to bring forward, because I don't think it will otherwise be addressed. We're concerned particularly about—

The Chair: One minute remaining.

Ms. Cole: Okay. We're concerned particularly about the process for an adult who wouldn't have the capacity to provide informed consent, who wouldn't be able to file on his or her own or authorize someone else to file or be deemed capable of instructing a lawyer.

Many people such as we have described in our organization have very supportive families and may also—and probably have—involved and committed social support services. We believe it's time for progressive thinking and that this is the one bill, the human rights bill, in which we could put in recognition of the reality and validity of supported decision-making. The concept of supported decision-making—the natural way we all make decisions—is particularly important to older families. After a lifetime of caring for their sons and daughters at home, they don't want to pass on and leave someone who is vulnerable to be put under guardianship simply because of the need to make a complaint.

The Chair: Thank you very much for your presentation.

ALLISON CORMIE

The Chair: Next is Allison Cormie.

Ms. Allison Cormie: If I run out of time, I have lots of one-page copies at the back of the room with 11 recommendations.

The Chair: You may begin.

Ms. Cormie: I'm a claimant of a human rights case and wish to support the goals of Bill 107 to change the process for dealing with complaints at the Ontario Human Rights Commission. My case has been before the commission for seven years without a hearing or even a decision to go to a hearing. In my experience of discrimination, this unacceptable delay has cost me my career, my means of livelihood, has damaged the evidence and caused severe financial distress to me and my family. Even now, after seven years, a meaningful remedy is nowhere in sight.

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I personally risked much to bring my case to the commission, only to find myself silenced yet again through its disenfranchising process. Case analyses and recommendations were being produced behind closed doors by anonymous individuals of unknown expertise, and without any input from me. This lack of control over my own case resulted in case analyses and recommendations that were in error and invalid, both in terms of the evidence and in terms of the basic principles of Canadian justice. These analyses were written as if vital documentary evidence did not exist at all. This included such things as my employer's harassment policy, my four

letters of complaint to my employer and its harassment officer, the extensive documentary evidence of the reprisals that followed, and an Ontario Labour Relations Board decision which determined that my union stood by and did nothing.

The commission has recently hired an expert from British Columbia, a law professor, who verified that on a number of accounts my case is valid. The professor agreed that the harassment I experienced while an assistant professor at a university did constitute gender-based harassment and discrimination, despite the fact that the perpetrator was female. This confirmed exactly what I had said to the commission back in 1999 and exactly what I had stated to my employer and its harassment officer in writing in 1997. The professor also recognized a pattern of reprisals that resulted from my complaints and described this as a second cause for relief. These reprisals were well documented and were described in three out of four written complaints to the university and its harassment officer. Despite reprisals themselves being contrary to the code, the commission did not even mention the issue of reprisals in two case analyses. In any event, one must wonder why, after seven years, the commission still needs an expert from British Columbia to help it to properly interpret the evidence and, as well, the Ontario Human Rights Code.

It is clear that my case ought to have been treated as a valid case by the commission from the outset, but it was not. Instead, I found myself having to fight with the commission itself for my right to a fair and equitable hearing, which I have still not received. Even with the expert opinion, I may still not receive a hearing.

My case is only unique in the sense that I managed to survive this long and have been able, twice now, to have the case analyses and recommendations overturned. However, this was only with the Herculean efforts of a top human rights lawyer and at considerable cost to me. The statistics demonstrate that the vast majority of cases are being dismissed inside a black box at the commission, without a hearing, without proper consideration of their merit and without investigation.

My experiences at the commission must be contrasted with those at the Ontario Labour Relations Board, where a decision was reached in my favour and against my union in approximately two years, and at a fraction of the cost to me. At the board I was allowed input into the decision-making process prior to a full hearing and was given direct access to the decision-maker. My lawyer and I sat in on all meetings, provided oral submissions, discussed the evidence with both the union and the decision-maker present and were able to respond directly and immediately to the union. Importantly, I was offered some control over how my own case was managed.

Meanwhile, the Ontario Human Rights Commission didn't even start its investigation until three and a half years after my complaint was filed. Then, during the next two years, it appears to have failed to interview any of my witnesses. After five and a half years, some of my witnesses confirmed to me that they had not been

contacted by the commission. This meant that the case analysis was heavily biased towards the respondent's point of view. It is only now, seven years later and with a third investigator, that these witnesses are finally being interviewed. In the meantime, one of my witnesses has died of natural causes, without being interviewed. In a forensic sense, such delays are wholly unacceptable in terms of the manner in which they cause damage to the evidence.

Even after all this time, the results of the investigation won't be released to me so that I can make use of them at a hearing; the investigation is solely for the purpose of the commission. And if I go to the hearing, I have to start the fact-finding all over again, from scratch. I suspect that some of my witnesses may have refused to be interviewed for fear of reprisals, and based on my own experience, I would have to state that their fears are well founded. This highlights the need to protect witnesses from intimidation and reprisals throughout, while at the same time being able to compel their full co-operation with an investigation. After all, fear of reprisals on the part of witnesses should be considered by the commission to actually strengthen a human rights case rather than be used to weaken it.

The following examples from my own case demonstrate the hazards involved when decisions are made behind closed doors, inside a black box, and without any input from me—from the claimants in general. There were many instances of the commission being oblivious to the evidence.

In one instance, the commission agreed with the respondents that my case should be dismissed on a section 34 application because, according to the commission, my union had already adequately dealt with the matter. This was not true at all. In fact, the Ontario Labour Relations Board, after a full hearing, determined that my union failed in its duty to represent me. The commission was in possession of the board's decision but ignored it anyway.

In another instance, the commission claimed that the university lacked a clear policy for dealing with harassment. This was also not true. In fact, the university had a very clear harassment policy but chose to ignore it. The commission had a copy of this policy, and therefore such statements in its case analysis made no sense whatsoever.

In yet another instance, the commission illogically claimed that the university responded to my complaints in a timely manner. In fact, my complaints were completely ignored for two years, during which time I did not even receive a single letter to acknowledge their existence.

The above are just some examples of how my case was treated and undoubtedly represent how scores of others are treated as well; only in their cases, their cases are being dismissed without a hearing at all.

The oversights concerning the investigation and the documentary evidence would never have occurred at a tribunal or under any other circumstances where I and my lawyer were allowed input and access to the decision-

maker. This has already been tested at the Ontario Labour Relations Board where, after being allowed input, I won my case.

At the commission, just to prevent my case from being dismissed, I needed a top human rights lawyer willing to defer some fees. Such a requirement would clearly put justice out of reach for most human rights claimants. Most claimants are from a disenfranchised group to begin with and come to the commission with an imbalance of power. They have fewer resources than most respondents, who are often employers. In my case, I am a sole claimant against an army of respondents, and the university's lawyer, paid for by the university, is representing the perpetrator of the harassment.

One way that harassment and discrimination are allowed to continue is to silence its victims. My own personal experience with the current process at the commission has led me to conclude, and rightly so, that the vast majority of claimants arrive at the door of the commission, only to be silenced by the commission itself. Claimants are provided with no voice, no opportunity to provide oral submissions, no opportunity to publicly support their cases or challenge the respondents or speak to the decision-makers. In short, anonymous decision-makers are allowed to take total charge of a claimant's case and dismiss it without any input from the complainants. This total lack of control over their own cases amounts to a further silencing and disenfranchisement of claimants, most of whom are victims of legitimate human rights cases.

The statistics show that these intermediary processes inside the black box do in fact cause most cases to be dismissed. All of this inevitably supports the respondents and demonstrates to all that there are no consequences for harassment and discrimination.

It is clear to me now that in my case the university didn't even acknowledge the existence of four written letters of complaint because it made an educated guess that if I were to take my complaint to the commission, it would have nothing whatsoever to fear. Only with considerable resources and an excellent lawyer can one be expected to currently navigate one's way through the black box at the commission. Then, if I am one of the lucky ones and my case goes to a hearing, I have to start all over again from scratch to do the fact-finding, at yet more cost and more time for me. Even following a full hearing, a remedy can be indefinitely delayed when the respondents again use their extensive resources to appeal.

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Based on my own experiences at the Ontario Human Rights Commission and compared to those with the Ontario Labour Relations Board, I believe that the process at the board is how a system should look to a complainant or claimant. The current structure and process at the commission need to be fundamentally changed as proposed in general by Bill 107. The black box needs to be eliminated and all claimants provided with fair, speedy and cost-effective access to an impartial hearing at a tribunal. The decisions of this tribunal need to remain final.

I would now like to conclude by listing 11 changes that I consider important for creating a robust system at the commission and one that will actually protect human rights:

(1) Most importantly, provide all claimants with direct access to a hearing before the human rights tribunal. No one should be subjected to a commission investigation behind closed doors and with the lack of control that is inherent in the current process.

(2) Change the role of the commission from that of gatekeeper for dismissing cases to that of advocating for claimants and for human rights. This is needed to encourage victims to come forward and to correct an imbalance of power.

(3) Create a user-friendly, open and transparent tribunal process, one which encourages the full participation of claimants.

(4) Provide support, advice and legal assistance to claimants as needed throughout the process and codify and adequately fund this commitment through legislation. The government has just declared a huge surplus and now should have the money for this.

(5) Ensure that cases move expeditiously to a hearing following a fair and equitable pre-hearing process. Allow claimants during the decision-making steps to a hearing to make oral submissions directly to the decision-maker in an open setting.

(6) Ensure that the tribunal has a demonstrated expertise and sensitivity for human rights issues and knowledge of the basic principles of justice and fairness.

(7) Ensure that applications before the tribunal are initiated and concluded in a timely manner.

(8) Expand the powers of the tribunal to ensure co-operation by the parties in the fact-finding and evidence-gathering phase.

(9) Strengthen protections for witnesses and claimants against intimidation and reprisals.

(10) Ensure that the decisions of the tribunal following a full hearing remain final.

(11) Allow the tribunal to award both non-monetary remedies and significant monetary damages, with the latter in line with those achievable through civil litigation.

Thank you very much.

The Chair: Thank you very much for your presentation. We'll begin with the official opposition; two minutes each.

Mrs. Elliott: Thank you, Ms. Cormie. One of the presenters this morning spoke about the need for the commission to follow the rules of natural justice in conducting its investigation. Many items that you've listed here would seem to be in conformity with those rules: having an open and transparent process; allowing people to present themselves. Is that generally what you're looking at in terms of reforming the commission as it is?

Ms. Cormie: Definitely.

Mrs. Elliott: Yes? Okay.

Ms. Cormie: But also, some of the decisions really—there was an offset between what I expect to be a

principle of justice. For instance, an act of reprisal was described—I, my lawyer and also the BC law professor described it as an act of reprisal: Because I complained, I was investigated for misconduct and my complaint was never investigated, which the commission actually described as a fair and balanced procedure. It was just out of whack with any kind of concept of fairness.

Mrs. Elliott: As you know, Bill 107 will largely take away the investigative powers of the commission. Could you give us your opinion as to whether you think the changes should be as you've stated here, or do you think this new system, where you go directly to a tribunal hearing, would be better?

Ms. Cormie: I'm just wondering if you have my revised version, in which I do not mention investigation. I actually discuss using the tribunal and using the fact-finding at the tribunal in lieu of an investigation.

The Chair: Thank you very much. Mr. Kormos?

Mr. Kormos: How do you understand the delay to have been created? Surely, people didn't say, "All persons whose surnames end in C are going to suffer seven-year delays." I hope not.

Ms. Cormie: The respondents came to the commission with a great deal of power relative to me and one of the hugest law firms in Toronto, and they're putting forward objections to this and objections to that and filing—you know. They're able to create this delay. I have no other explanation than that of an inefficient process.

Mr. Kormos: You do have, obviously, the personal skills, the wherewithal, the financial resources to retain counsel, to retain one way or another the expert witness—

Ms. Cormie: Well—

Mr. Kormos: One way or another.

Ms. Cormie: I didn't retain that expert witness. The commission did, actually, in the end. The commission hired that expert.

Mr. Kormos: Oh, the commission. This is the BC law professor?

Ms. Cormie: Yes.

Mr. Kormos: That's a pretty valuable function, then, for the commission to have performed; isn't it?

Ms. Cormie: It is, but it seems to me that it was the job of the commission to actually come to that determination, to be able to evaluate a case. Why they had to hire someone from British Columbia when they're sitting there—they're the stewards of the code.

Mr. Kormos: I agree. There are professors all over Ontario who would have offered themselves up for a fraction of the fee.

Ms. Cormie: I have no idea why they had to do that. I think the fact that the perpetrator was female might have complicated the issue, but that really shouldn't have. If you're competent in human rights issues, that should not have complicated things.

Mr. Kormos: What stage is this at now? Where are you at now?

Ms. Cormie: We're on the third investigation, we have an opinion of the expert, and I still don't know whether I'm going to have a hearing. It could still be dismissed.

Mr. Kormos: Of course, because it will be if Bill 107 passes.

Ms. Cormie: Well, it won't be dismissed if Bill 107—

Mr. Kormos: You'll be sent back to point zero.

The Chair: Thank you, Mr. Kormos. The government side; Mr. McMeekin.

Mr. McMeekin: Thanks very much, Ms. Cormie. I'm particularly appreciative of the fact that you didn't just practise the politics of complaint; you actually came with some arguments about what you're for and the recommendations here. I want to have a chance to look at those.

I want to be clear, because I was intrigued with your language—I don't mean to imply that this is all inside baseball, but you talked several times about controlling your own hearing. I think I know what you mean by that, so I want to ask you, is there a difference between enhancing the hearing process—better communication, keeping people informed—and controlling your own hearing? My own sense is that a human rights commission, if it's working properly, has to be objective, and we're not arguing whether it was or not; okay?

Ms. Cormie: Yes.

Mr. McMeekin: I just wanted to get some clarification on your phraseology there.

And finally, I'm a little confused as to whether you actually favour Bill 107 with the changes or you're opposed to it.

Ms. Cormie: I favour it in the sense that it wants changes, big changes. However, I'm sure that the details and legalities of it are beyond my ability.

Mr. McMeekin: That's the inside baseball stuff.

Ms. Cormie: Exactly. When I talk about controlling it, I really do have to compare it to the Ontario Labour Relations Board, where there was a mini-hearing before the hearing to decide whether you're going to go to a hearing. I sat there, my lawyer sat there and the union sat there. The decision-maker was there. We all had an argument. If the union came up with a point, I could respond right away. I'm not advised—

Mr. McMeekin: So that was a good process.

Ms. Cormie: That was a good process—fair, open. I knew what was going on, for one.

Mr. McMeekin: So if we could replicate that, have some guarantee of replicating the essential goodness of that process in 107—

Ms. Cormie: I think that would be a valid process.

The Chair: Thank you very much, Ms. Cormie.

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LOCAL AGENCIES SERVING IMMIGRANTS

The Chair: Next is Local Agencies Serving Immigrants, Hamdi Mohamed. Good afternoon, Ms. Mohamed. You may begin.

Ms. Hamdi Mohamed: Good afternoon. My name is Hamdi Mohamed. I am the executive director of Ottawa Community Immigrant Services Organization. Today I am speaking on behalf of Local Agencies Serving Immigrants, which is a coalition of six major settlement agencies.

I want to start by thanking you for the opportunity to appear before you regarding Bill 107. This gives me a chance to speak to a very important issue that will have an important impact on the lives of Ontarians, particularly those most affected by discrimination. I must mention that I have been a proud Ontarian for the past 17 years. Ontario is my adopted home, after fleeing political persecution and coming here as a refugee. For this reason, the potential for the loss of access to justice under Bill 107 is deeply disturbing at the individual level.

First, I'm going to quickly tell you what LASI is, and then I'll start talking about my points.

Local Agencies Serving Immigrants, LASI, is a unique coalition of Ottawa's six major settlement agencies. These partner agencies are the Catholic Immigration Centre, Ottawa Community Immigrant Services Organization, Immigrant Women Services, Lebanese and Arab Social Services, Jewish Family Services, and the Ottawa Chinese Community Service Centre. These agencies were pioneers in the settlement and integration of new Canadians in this region. Some have been supporting new Canadians for almost 50 years now. Collectively, we provide a broad range of services and programs, including settlement support for immigrants and refugees, counselling, legal services, employment, prevention of violence against women, housing support and health services. Some of our staff provide support to immigrants who are struggling to deal with the trauma and pain of being victimized in making human rights complaints.

The Ontario Human Rights Code serves to create fairness and equality of opportunity for all Ontario residents and makes it illegal for anyone in the public or private sectors to discriminate against a person because of his or her disability, sex, religion, race, sexual orientation or certain other grounds. It bans discrimination in access to things like employment and the enjoyment of goods, services and facilities.

Created to enforce the code, the Ontario Human Rights Commission's most important duties include investigating human rights complaints and trying to negotiate a settlement. Human Rights Commission investigating officers have powers to publicly investigate discrimination complaints. In this sense, the commission is the most important public agency in this province, in our opinion.

The commission is a forum that has been accessed by racialized communities when an act of discrimination occurs, particularly when they experience racial discrimination or where race intersects with other grounds of discrimination. The general marginalization of immigrants and their increasing socioeconomic disadvantage has made access to the commission and its ability to protect fundamental rights guaranteed by the Ontario

Human Rights Code critical. Being able to rely on a strong and independent human rights body to uphold their rights, and knowing that the commission will support them by investigating, helping them prove the case and assigning legal counsel and that they could depend on the accumulated expertise of the commission to help them navigate a very complex system put many at ease. This commission's investigative powers and its public interest role are particularly important in the context of 9/11 of increased prejudice and discrimination experienced by all racialized communities and Islamophobia experienced by Arabs and Muslims.

Bill 107 substantially weakens the commission's investigative powers and its public interest role. If a person has been discriminated against, they will have to file a human rights complaint with the Human Rights Tribunal. They must investigate their own case. Therefore, the proposed system under Bill 107, in our opinion, takes away guaranteed rights to investigation and legal support, and allows the tribunal to charge user fees.

As we agree with many concerns raised by community groups such as the AODA Alliance, I will only highlight points that are of specific concern with regard to immigrants and people we serve.

LASI's concerns with Bill 107: LASI welcomes change to the Ontario Human Rights Commission and we commend the government for its efforts to address the backlog of complaints in the current system and to improve a slow human rights enforcement system. However, while we agree the system needs to be substantially amended, we are deeply concerned with the potential of the proposed changes to substantially weaken the Human Rights Commission's core role of investigating human rights violations and prosecuting where evidence warrants.

By removing the commission's enforcement powers, we believe the proposed system under Bill 107 takes away guaranteed rights to investigation and legal support and allows the tribunal to charge user fees. This will impact the rights of all Ontario citizens and will have particularly detrimental implications for immigrants, who, because of their position in society, tend to be most vulnerable to discrimination and violation of fundamental rights. LASI is concerned that the decision to eliminate the investigative and prosecution process will deny access to justice to immigrants and racialized community members who experience racial discrimination.

LASI is particularly concerned about the following elements of Bill 107:

(1) No right to free investigation: The commission's power and ability to investigate human rights complaints is crucial for immigrants, who are often on the receiving end of multiple forms of inequity. Without the investigation and compliance functions of the commission, complainants will be expected to navigate the complex process on their own or hire a lawyer. It will be extremely difficult and onerous for many immigrants, who are socio-economically marginalized and lack the necessary resources to conduct their own investigations and

gather evidence that would be necessary to demonstrate that there has been racial discrimination and to convince the tribunal to refer their claim to a hearing or to succeed at a hearing. Meanwhile, they will be confronting the extensive and sophisticated resources that would be at the disposal of respondents such as corporate or state bodies. Even those who are able to investigate the complaint themselves would lack the commission's statutory powers of investigation. They will lose the commission's accumulated expertise in dealing with race-based and gender-based cases, and cases where multiple grounds are a factor.

In this case, we recommend that:

—the right to a free investigation to be conducted by the commission, including the commission's statutory powers of investigation and access to its accumulated expertise, be restored;

—Bill 107 should be amended so that it does not repeal the commission's powers under part III of the current code to investigate, conciliate and, where warranted, prosecute human rights complaints;

—Bill 107 should be amended to give human rights complainants the option of either taking their complaint directly to the tribunal or lodging it with the Human Rights Commission, with access to all the public investigation, mediation, conciliation and public prosecution powers and duties that the commission now provides.

(2) We are concerned about no statutory guarantee to free legal representation. Lack of free legal representation will shift the responsibility on to an individual victim and will contribute to further marginalization, pain and traumatic experiences for society's most vulnerable groups. The absence of a statutorily guaranteed right to publicly funded legal representation will prevent and deter many immigrant members of our communities from filing and pursuing legitimate claims in areas such as employment, housing, education and access to services.

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Immigrant communities, who may not have the same level of resources as the respondents, will have difficulties paying for a lawyer and will be forced to represent themselves against well-paid counsel if they can't afford a lawyer. These communities will be at a great disadvantage as they would likely be less familiar with a complex system and may often lack the knowledge and expertise required to mount a case. Claims of racism, which often raise systemic concerns, are complex and require extensive hearings, preparation and expert evidence. Complainants from these communities would not have the resources that are required and the disadvantage would be overwhelming.

For this reason we recommend that:

—section 46.1 of the bill be amended to provide that every human rights complainant has the right to publicly funded, effective legal representation by a lawyer in proceedings at the human rights tribunal from the outset of the complaint through and including all appeals and the enforcement of any tribunal order;

—Bill 107 be amended to require that government decisions over the funding of legal representation must

be reported to and approved in advance by the Legislature; and

—Bill 107 be amended to require that a special all-party committee of the Legislature, with equal representation from all political parties, shall annually review the government's funding for legal services for human rights complainants and shall make recommendations to the Legislature regarding the level of funding for the following year.

The third concern we have is expanded tribunal gate-keeping functions. Bill 107 will see complaints moved directly to the human rights tribunal, which will then do the investigation and issue the decision. In addition, under Bill 107 the grounds for dismissing a complaint are expanded, and the tribunal will have the power to dismiss cases without ever moving forward. This, coupled with the lack of guaranteed legal representation, means that access to justice for members of these communities will be severely reduced.

Immigrants, refugees and members of racialized communities will not have an absolute right or direct access to a hearing, as the tribunal will now have the gate-keeping power to dismiss a complaint without a hearing. Whether the Human Rights Commission or the tribunal carries out the gate-keeping function, the entire system requires an immediate restoration of the funds that were cut by the previous government. The system in general would require a long-term commitment to maintain, if not increase, the restored funds so that complaints are not summarily dismissed because of lack of resources.

We also recommend that:

—all complainants opting for direct access to a hearing will get a hearing within 90 days of filing their claim, that the tribunal can't dismiss or defer a case without a hearing, and impose enforceable deadlines for major steps in the proceeding; and

—hearings are conducted in a fair manner, e.g., stop the tribunal, the judge, from also being the investigator.

The fourth concern we have is the reduction of the commission's public interest role and ability to address systemic discrimination.

The key function of the code and the commission is to represent the public interest in resolving human rights violations. Under the current code, the Human Rights Commission has broad powers to investigate any kind of violation of the Human Rights Code. It is built on the fundamental foundation that human rights violations are a public wrong, not just a private injury inflicted on a private individual. Its integrated function ensures that cases that proceed through the system are dealt with for wide-ranging policy considerations, legal implications, opportunities for public education, and with an eye to the public interest component. This means that both individual and substantive societal remedies are effected, thus having a stronger potential to prevent and eliminate discrimination on a broader basis.

Under Bill 107, the commission's power to launch and pursue systemic complaints at the tribunal will be subject to the tribunal's veto. This will significantly curtail its

public interest role and ability to effectively address systemic discrimination. Therefore, removing the commission's role in dealing with individual complaints severely hampers the fight against systemic discrimination. It creates a false distinction between individual and systemic complaints, as individual discrimination claims often involve broader and deeply rooted systemic problems. In the context of increased hostility, racialization and anti-immigrant sentiments, the commission's public interest role is more critical than ever.

Therefore we recommend that:

—Bill 107 be amended throughout to remove any reference to "systemic" issues, discrimination or cases as a criterion for any case, remedy, proceeding or jurisdiction;

—section 36 of Bill 107 be amended to permit the Human Rights Commission to initiate its own complaint in any case, regardless of whether it is a systemic case and not subject to any additional requirements;

—Bill 107 be amended to provide that no party can challenge the Human Rights Commission's decision to initiate its own human rights complaint as long as the complaint is within the code's overall jurisdiction;

—Bill 107 be amended to ensure that when the commission initiates its own complaints, it has all the investigation powers it needs;

—section 39 of Bill 107 be amended to give the Human Rights Commission the right to intervene in any case before the tribunal and to require the tribunal to forward to the commission a copy of every human rights complaint filed with the tribunal;

—section 43 of Bill 107 be amended to enable the commission, when it launches its own human rights complaints, to seek remedies not only regarding future practices but also for past discrimination, including all remedies now available under the current code and any additional remedies that are otherwise made available under any expanded remedy power to be provided in a strengthened Bill 107;

—section 42 of Bill 107 be amended to substantially broaden the power of the tribunal to issue strong remedies to prevent future acts of discrimination and to provide that remedies—

The Chair: One minute.

Ms. Mohamed: I'm almost done—are available which derive from the evidence at the hearing, irrespective of the subject matter of the complaint.

We also have concerns about the introduction of user fees and legal costs, but you have the submission—I must mention that the submission is still a draft; I will forward the completed one in the next little while—so I'm just going to skip that.

In conclusion, the Ontario Human Rights Commission plays a critical role in assisting individual victims of discrimination and is very important to all Ontarians. Bill 107, the Human Rights Code Amendment Act, weakens the commission's investigative powers and will take away the complainant's fundamental right to a publicly funded investigation. By forcing the complainants to

investigate and prosecute their own complaints, the proposed changes will lead to the privatization of human rights and deny access to justice. Removal of the commission's power to investigate and prosecute claims of discrimination is particularly problematic for immigrants, who because of their socio-economic situation will not be able to afford legal representation and may be forced to navigate an unfamiliar and very often complex system on their own.

1510

We urge the government to put this proposal on hold and engage in broad public consultations. A thorough and meaningful consultation with the public is needed to find ways of strengthening the Ontario Human Rights Commission. We recommend consultations with those most affected by discrimination by virtue of their gender, race, economic status, national status, disabilities etc. in our society. To continue to live in a democracy where justice and discrimination are condemned and where pluralism and diversity are respected, Ontarians need a human rights system that is completely accessible to all people who face discrimination and need to be protected.

Thank you for your consideration.

The Chair: Thank you. That was right on.

MYALGIC ENCEPHALOMYELITIS ASSOCIATION OF ONTARIO

The Chair: The Myalgic Encephalomyelitis Association of Ontario. You may begin.

Ms. Margaret Parlor: On behalf of the Myalgic Encephalomyelitis Association of Ontario, I would like to thank you for the opportunity to appear before this committee. I am coordinator for youth and education issues for the association, a position I have held for three and a half years. My presentation focuses primarily on our efforts during that time to break down barriers to education for young people with ME and other chronic illnesses.

This weekend, I had the good fortune to meet a young man who is starting a career as an opera conductor. He was studying the musical score of a Puccini opera, preparing to lead rehearsals in two weeks' time. The conductor's score has about a dozen lines on each page, showing the parts for the various wind, brass, string and percussion instruments, along with the parts for the singers. His job, he explained, was to bring all the various parts together into a meaningful performance.

I could not help but think that there are strong parallels between his efforts to bring together the various parts of the opera and the exercise we are going through today. We have a human rights system that has a number of players, including educators, health professionals, the accessibility directorate, the commission and the tribunal, along with support groups and organizations such as our own. If we perform well together, we have a good system. If we do not perform well together, the system does not function for those it is supposed to serve.

ME is a syndrome, meaning that it is a pattern of symptoms. The pattern is instantly recognizable to those

familiar with it but baffling to those who are not. Unfortunately, not enough people are familiar with ME. Someone can be ill with ME for years without getting a correct diagnosis and thus not be receiving the appropriate medical and social support.

There are seven requirements for a diagnosis. The formal criteria are found on the last two pages of the package I handed out and are available on our website. Let me run through them very quickly, paraphrasing them somewhat.

(1) There is physical and mental fatigue that reduces activity levels, generally by 50% or more. This does not mean that people operate at half speed. For short periods of time, they may operate at full speed, but this cannot be maintained.

(2) Requirement 2 talks about post-exertional fatigue or malaise, which means that overexertion can lead to a worsening of symptoms, a worsening of the condition of the person. This is why we are so concerned about the new mandatory policy on daily physical activity in schools.

(3) Sleep disorder is present, meaning this condition cannot be fixed easily.

(4) Pain is present.

(5) There are neurocognitive difficulties in evidence. As with activity levels, these can be variable. There may be periods of clear thinking and periods of brain fog.

(6) There are other varied symptoms of the autonomic, neuroendocrine or immune systems.

(7) The symptoms must endure for at least six months for adults and three months for young people.

“Myalgic encephalomyelitis” was the name given to this group of symptoms in the United Kingdom, while “chronic fatigue syndrome” was the name adopted in the United States. The name “chronic fatigue syndrome” oversimplifies the illness by referring to only two of the seven symptoms. Chronic fatigue that comes from lifestyle choices is very different from what we are talking about here.

There are other conditions that have a similar pattern of symptoms. They should be ruled out before a diagnosis of ME is made. One in particular, Lyme disease, has become very troublesome. Lyme disease is a group of infections transmitted primarily by ticks. If untreated, it can lead to chronic illness or death. The medical profession thought it knew how to recognize Lyme disease. However, it is becoming apparent internationally that the criteria used for diagnosis are fraught with problems and that a significant number of cases have been missed. The issue may be particularly severe here in Canada because conventional wisdom states that there are infected ticks only in a few specific, known locations—an assumption that has been shown to be quite wrong. We hope that the Ontario health system jumps on this issue immediately to raise awareness of the potential seriousness of tick bites, to encourage early diagnosis and to go back and help those who currently have undiagnosed, untreated chronic Lyme disease.

Back to ME: The Canadian Community Health Survey, cycle 2, in 2003, found 133,000 Ontario adults

with ME, representing 1.5% of the adult population. This is roughly the prevalence of Alzheimer's, and well above the prevalence of AIDS, MS, breast cancer and many other better-known and better-supported illnesses.

A UK study in the late 1990s found ME to be the leading cause of long-term school absence, well ahead of more likely suspects like cancer, psychiatric issues or injuries. We have to be very cautious in using the rate found in the study, but it does suggest that several thousand students in Ontario are affected.

ME has a high sickness impact profile. Australian researchers have found that those with this disorder have more dysfunction than those with multiple sclerosis and that in ME the degree of impairment is more extreme than in end-stage renal disease and heart disease. A recent US study found that each case of ME resulted in a US\$20,000 annual loss of productivity for the family. Collectively, it has a substantial impact on the whole economy.

Treatment for ME is to live within one's limits and to work for recovery. Hospitalization is rare. Patients are more likely to be partially or completely homebound. A young person who is homebound would not have access to either hospital-based or school-based education programs, which is where the crunch comes in. The prognosis for young people with ME is fairly promising.

The Environmental Health Clinic at Women's College Hospital is the Ontario focal point for ME, along with fibromyalgia and multiple chemical sensitivities. It has an annual budget of around \$400,000, a paltry amount considering the challenges it faces. The clinic does not serve children. There is no clinic for children.

Society is uncomfortable with childhood illness, especially ones that are poorly understood. Families, just when they need support, are suspected of being part of the problem and can be reported to the children's aid society.

We have identified three key educational issues. Number one is awareness of ME among educators, number two is the issue of qualifying for special services, and number three is the availability of suitable programs. We're talking about part-time school or homebound schooling, which can comprise visiting teacher, correspondence, Internet courses and so on. These programs must be accompanied by curriculum modification or a reduction in the amount of work. A young person who is at school only halftime would otherwise take eight years to complete a four-year high school program.

1520

We believe it is important for the education system to become familiar with ME for several reasons:

—The education system is in a very good position to recognize cases since, unlike health professionals, the education system sees students for extended periods.

—Educators would treat students with ME with more sensitivity. Incorrect labelling—words like “unmotivated,” “defiant,” “attention deficit” and so on—would be avoided.

—Better decisions would be made around appropriate accommodations and better decisions would be made

around activities to be avoided, like overexertion. And there is a question about whether immunization is appropriate for students who already have compromised immune systems.

Now let us look at some of the provisions in place which are supposed to protect access to education for young people with ME:

—The Ontario Human Rights Commission has confirmed that ME is a disability protected under the code and that students with ME have a right to access educational services.

—The commission has published guidelines for accessible education, outlining roles and responsibilities.

—The Education Act promises access to education for all young people in Ontario.

—The Ministry of Education requires all school boards to complete special education plans every year, outlining how exceptionalities are recognized and served.

—The Ontarians with Disabilities Act requires the ministry and boards to complete accessibility plans every year.

—Our national association has compiled a sourcebook for teachers of students with ME and fibromyalgia. I should mention that this document is only available in English; we have not found the resources for translation.

This is an impressive list; it looks good on paper. So where is the system breaking down? The problem starts around the categories of exceptionality.

What is an exceptionality? The education system is based on assumptions that students can see reasonably well, that they can hear reasonably well, that they can learn at a relatively average pace and so on. One key assumption is that students can attend and concentrate full time, and if the student misses school, he or she can make up the time. Students with ME have, at most, 50% of normal activity levels. Thus, they can be active, at most, six or seven hours a day, and that's the best case. Subtract activities like dressing, eating and transportation to and from school, and you can see that schoolwork will inevitably be affected. ME students, then, do not have energy reserves to catch up when they fall behind.

There is no category of exceptionality in Ontario for this circumstance. There is such a category in the United States legislation called "other health impaired."

We believe chronic illness or activity limitation should be a separate category of exceptionality. The previous minister suggested ME could be considered a physical disability. This idea could possibly work if there were a common understanding across school boards. We asked the ministry to notify school boards of this broader interpretation of the physical exceptionality. The ministry declined to do so. We simply cannot understand why. In the end, we notified boards ourselves. We are not sure we had much effect. The message would have been much stronger coming from the ministry. School boards are responsible to the ministry; they are not responsible to the Myalgic Encephalomyelitis Association of Ontario.

If school boards could not be nudged into considering the needs of chronically ill students through the

categories of exceptionality and the special education plans which follow from there, we hoped to alert them through the ODA plans. The ODA requires boards to complete annual plans showing how they will improve accessibility. Unfortunately, the tool kit prepared for school boards did not consider chronic illness at all. We asked that the tool kit be amended and even submitted suggested changes. That was a year or two ago. Changes have not been made.

Now I'll give you a positive note. The Ministry of Education did compile information on home instruction policies from across the province. The study showed a variety of approaches, few, if any, of which would address the needs of students with ME. The ministry has indicated it will discuss the findings with boards this fall.

A number of human rights abuses have been reported to our organization. I have actively encouraged families to submit complaints. I was not aware of the ARCH report, which recommends that complaints not be filed; I actively encouraged them. Every single family I suggested this to refused to submit a complaint. Something is going on that I do not fully understand. I think it might have to do with the imbalance of power between families and the school system. Families do not want to upset schools because they feel there are no alternatives, that they have to maintain good relations despite the costs. They may fear retribution for their disabled children and the siblings. In some cases, the relationship between a family and the school had broken down completely and families resorted to home-schooling. In that case, why fight to return a student to a situation where he or she is not welcome? The provisions in Bill 107 to change the complaint process may have value, but we suspect that our families will still not use them to enforce educational rights.

Our issues are systemic rather than individual cases. The investigation process would appear to be a better strategy, so let's take a look at it.

On July 8, 2005, the commission announced an investigation of the Toronto District School Board regarding the implementation of the Safe Schools Act. On November 16, a couple of months later, the commission announced an agreement with the Toronto District School Board. The agreement put forward a number of initiatives to deal with the discrimination experienced by students—initiatives around awareness, staffing, monitoring, policy review and so on. This is a superb management framework for addressing the issues. It demonstrates the excellent understanding that the commission has of disability issues and how they might be addressed in a systemic way. It was music to our ears. We would love to have the same kind of integrated strategic plan for students with ME. It would make such a difference. However, in the same July 8, 2005, announcement, the commission said that it would also investigate the Ministry of Education. More than a year has passed. We have seen absolutely nothing. This is very discouraging. If this process is taking so long, we wonder how long it is going to take us to convince the government

that changes are needed to serve young people with chronic illness.

Based on the excellent work of the commission, we are supportive of an enhanced investigative role for the commission. However, we question whether this will do any good. Our experience is that the system blockages are occurring beyond the control of the commission. Ministries are not accountable to the commission; they are accountable to the provincial Parliament. Part of ministerial accountability should be adherence to the code. This, we submit, is a crucial issue for the justice policy committee to address.

As you conduct your hearings and deliberations, we ask you to consider not only how the commission and tribunal might be modified, but how the human rights system works as a whole. Human rights are not the sole responsibility of the commission and tribunal. Everyone needs to work together to make human rights a reality.

The Chair: Thank you. There's a minute each. We'll begin with the official opposition.

Interjection.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, Ms. Parlor—a fascinating introduction to an issue that most of us have not had a great deal of exposure to.

I encourage you to not be overly harsh with the commission in terms of its investigation of ministries, because ministries, once they're under investigation, will circle the wagons. They'll lock and bolt the doors. The troops will be called out. They'll be lining the parapets and there will be pots of boiling oil in anticipation, whether it's of staff from the commission or even the public auditor. The public auditor has expressed concerns about accessing ministries, never mind the Ombudsman, Mr. Marin.

Having said that, I appreciate your interest in encouraging families to submit complaints. That's an important thing, because the more that the commission hears complaints, the more they then begin to identify the systemic quality of the problem. So, in my respectful submission, it's naive to tell people not to make complaints. It's important that complaints be made.

We perhaps have to—not perhaps. I'm sure the commission needs more resources. They perhaps need some stronger guidelines in terms of time frames and how it does stuff. But I for one think the commission's role has great value. I appreciate your input here today.

1530

Ms. Parlor: If I did not make myself clear, we very much appreciated how quickly the commission stepped forward to confirm that ME was protected. We very much respected Guidelines to Accessible Education; we think that is a very fine document. And we think the agreement with the Toronto District School Board is a very fine document also.

The Chair: Thank you. The government side.

Mrs. Van Bommel: I've heard of fibromyalgia, and ME is something new. Is there a difference between them?

Ms. Parlor: Very much.

Mrs. Van Bommel: What is the difference?

Ms. Parlor: I'm sorry. Let me not say "very much." They very often overlap. The National ME/FM Action Network, under guidelines set up by Health Canada, established two panels of expert doctors, and they came up with diagnostic criteria for ME and diagnostic criteria for FM. You can read them on the ME/FM Action Network website, mefmaction.net/.

To qualify for ME, you have to meet these seven requirements. To qualify for fibromyalgia, it's focused on widespread pain and a test of pain when tender points are pressed. It's a package beyond that. With fibromyalgia, if you pass the tender point test and you're diagnosed, then there are certain other symptoms that are very common with that. That's well documented on the site.

Mrs. Van Bommel: Because I do know that fibromyalgia patients also suffer from chronic fatigue.

Ms. Parlor: As far as I know, there is no active provincial association for fibromyalgia right now. We do work on behalf of young people with fibromyalgia as well.

The Chair: Thank you for your presentation.

YAVAR HAMEED

The Chair: Next up we have Yavar Hameed. Good afternoon. You may begin at any time.

Mr. Yavar Hameed: Good afternoon, panel members. First of all, I'd like to thank you for giving me this opportunity to present. What I've handed out to you is a brief series of recommendations that I have put together. I'll just give you a moment to receive that.

The Chair: You may begin.

Mr. Hameed: Okay. Sorry about that.

I guess by way of preface, to understand where my comments are coming from, I'm a member of the private bar here in Ontario. I am here in my personal capacity as a lawyer representing my law firm. I specialize in matters dealing with human rights. I thought that this is an issue definitely of public importance and certainly of importance to me. It's in that context in which I come forward.

I understand that you have individuals coming forward from different organizations, as well as legal aid, who will be giving you part of the picture. What I'd like to do is complete that from a private bar perspective, but perhaps throwing in a bit of a twist.

Maybe I can start with this, and it's not anything that you wouldn't have heard already. We know that the current process, as it exists before the Ontario Human Rights Commission, is bottlenecked. There are delays, and justice delayed is justice denied. I think it's that perspective which this government takes to loosening that bottleneck and moving things forward. The purpose of my comments today is perhaps to give pause to that laudable objective of receiving justice and doing so in a more immediate time horizon, but bearing in mind what the function is of protecting and preserving the public interest.

Before I get into my more substantive recommendations, the public interest is something that, as you know, the Ontario Human Rights Commission protects, it has protected and it is one of its functions, given the intrinsic nature and importance of human rights to our society, and internationally as well. What we're faced with here, in the context of Bill 107, is the opening of the door of accessibility directly to the tribunal. In some senses this is releasing that bottleneck, but effectively what we're doing—there shouldn't be a mistake—is that we're also deferring that bottleneck to somewhere else, before the Ontario Human Rights Tribunal.

Without casting aspersions on the intent and the objective and the motivation of the Ontario Human Rights Tribunal—I think it's there and it will attempt to make the process as efficacious as possible—the Ontario Human Rights Tribunal is not the Ontario Human Rights Commission, and the difference there is that we're talking about an adjudicative body versus an investigative body which has as part of its mandate to protect the public interest. By severely limiting the capacity in which the Ontario Human Rights Commission is able to protect the public interest—that is to say, limiting it to complaints of a more systemic nature—in a sense we've hamstrung the ability of that body to protect the public interest and, in a larger sense, for the public interest to be protected at all. That's sort of the foundational principle of my submission. Whereas I agree that there needs to be some form of attenuation of the existing system, how can we do that without completely gutting and completely undermining the very important principle of protecting the public interest?

Moving to my recommendations, as part of this government's commitment to the public interest in terms of both ensuring access to justice and accessibility, we also want there to be adequate funding and resources for individual complainants before the Ontario Human Rights Tribunal. As a general principle, no matter which way you go on this legislation—I think other groups would have said it and I'm simply reiterating what's been said because it's so important—there needs to be some kind of mechanism of funding put in place, something concrete, not a general abstract notion of agreements that can be entered into or funding in theory, but there needs to be funding in practice. This needs to be contextualized against a backdrop of the limited funding resources and capacity that we're faced with. So if we are taking away from one pot, which is the Ontario Human Rights Commission, we just need to be cognizant that there is not an unlimited fund to deliver funding before the Ontario Human Rights Tribunal.

1540

As a lawyer practising in the private bar, I tend to think that there is something laudable about opening the doors to accessibility, but at the same time accessibility must mean meaningful access. So I leave this question for you to deliberate about—I believe the South Ottawa Legal Clinic is going to speak to this matter as well—but we must bear in mind the burdens that are already being

borne by legal aid clinics. We have no idea what the road map is going to look like when this burden is deferred to legal aid, when it's just thrown out there into the void. I would love it personally, as a private bar lawyer, if I could simply go to legal aid, have my clients apply for a certificate and represent before the tribunal. I somehow am skeptical that that's going to happen with the kind of ideal notion of accessibility that we would like, given what I'm sure you know about the financial burden and cost of litigating any case before the Ontario Human Rights Tribunal. So these are things that need to be foremost in your mind. Bill 107 doesn't have a plan for financing and funding individual complainants before the tribunal and that's simply not acceptable.

The next points, I would say 2, 3 and 4, are consistent with my comments by way of preface in terms of the public interest, and that is to say that one of the things you're well aware of in terms of the amendments proposed under Bill 107 is that the commission in the main is to maintain its role with respect to advocacy against systemic discrimination. But how does the commission know which complaints are systemic and which are not? Often what happens in the existing system is that the commission assists in articulating what the systemic nature of a complaint is as a complainant attempts to define what the issue is. In that sense, I would say that at the very least the commission, in whatever form it takes, needs to be given notice. It needs to know what complaints are passing through the system. I think that's important and is simply in furtherance of what's already there within the context of the amendments.

Thirdly, giving the Ontario Human Rights Commission the capacity to have standing before the Ontario Human Rights Tribunal: This is a legal issue. I don't specify the dimensions of what that standing needs to mean, but I think at a very basic level the standing at least should be there. That is to say that the Ontario Human Rights Commission should be at the table or should have that capacity to come to the table to deal with complaints as the protector, as the purveyor of the public interest—an adjudicative body just simply can't do it—in order to maintain any semblance of even-handedness. That's just not the role of the Ontario Human Rights Tribunal. So we need to, as point number 3 suggests, have the commission there to at least articulate issues of public importance through the process or at least at the outset of the process or at critical junctures. There are a lot of questions to be answered, but I think it would be an error to completely extract the commission from having a role before the tribunal.

Fourthly, and this is something that I did not develop single-handedly but in consultation with some of my colleagues who have had experience in dealing with the commission, with the delays of the commission—I'm not sure if you would have heard this kind of suggestion before, but sort of an attenuated idea of an investigative capacity of the commission to say, "Is there a way that we could maintain the commission, maintain its commitment to the public interest and at the same time streamline the process?" Those persons who are very firm

believers in the importance of the investigative process will say that you can't have this middle-of-the-road type of perfunctory investigation; it's not adequate. It doesn't allow the commission to do its job.

I guess the essence of this proposal in number 4 is in cognizance of the context in which we are right now. If we have to move forward, if we have to somehow decrease the hurdles, the obstacles that are creating the bottleneck, is there something we can do, short of completely gutting and eroding the body that protects the public interest? So by number 4, what I refer to there is some kind of threshold, a lower threshold. I refer to the reasonable and probable grounds standard, as you probably know from cases of criminal prosecution. In that case, those of you who have been exposed to that system, it's a bare threshold and it's one that by and large will allow charges to pass muster at a preliminary stage to get in the door.

What this would avoid, I guess, is, again, deferring that process of gatekeeping from the Ontario Human Rights Tribunal. Because again, and I emphasize the point, the Ontario Human Rights Tribunal is not there to protect the public interest—it simply can't be—so in this sense, again, a scaled-back version of protecting the public interest, but it's still there with respect to keeping that alive within the Ontario Human Rights Commission.

A fifth point, which is more of a nuanced point: I know this came out in the more recent Cornish paper as an issue to look to, and it's one that has particular significance to my practice, and that is to say that Bill 107 essentially—I believe it's under section 35; I'm not sure—forces the individual to make a choice of procedures. One of the pitfalls of that process is that effectively or implicitly what the Legislature is doing is eroding the capacity of individuals to take claims forward based on section 15 of the charter.

In a federal context, the federal court has dealt with this issue in a case called *Pereira* several years ago. I think it was quite aptly put out in that case that the intrinsic nature of human rights and equality protections that are set out in the charter should not be eroded by another parallel, albeit very significant, process. We don't want to erase that availability process for individuals. I think that's significant to keep that alive in terms of where individuals might have recourse in terms of availing of their charter protections.

In summary, then, I would simply say that we should really take a long look and take a step back before we consider doing this step or this proposed amendment, which will undoubtedly have dire consequences for our system. We simply don't know what will happen in the future. I think there is certain optimism on the part of all actors and stakeholders that the new system may be better, may be more efficient, but at a fundamental and conceptual level, we simply can't be deluded into thinking that the newness of the process can be a surrogate for the protection of the public interest. So in that regard, I would urge you very strongly to reconsider a sweeping erosion of the commission's purview and mandate, and

think more along the lines of how the commission may be tailored to maintain that public interest role that no other body can protect.

1550

The Chair: Thank you. We have about a minute each, beginning with Mr. Kormos.

Mr. Kormos: Thank you, Mr. Hameed. You've got to understand, just like Mr. Zimmer and his colleagues get paid a fair amount of money—not a lot, but a fair amount—to get the pompoms out and cheer this legislation, we get paid a similar amount of money to criticize it. But I've got to tell you, two parts of this bill that just scare the daylights out of me are that “the tribunal shall adopt the most expeditious method of disposing of an application on the merits,” but the tribunal also may create rules which “limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions.” Yikes. That is scary stuff.

They're being told that it's got to be the most expeditious way. Well, we can speed things up all right. We'll grease this pig and slip it through in the dark of the night. We can require people to present evidence by way of affidavit, to restrict those affidavits to two pages; in the case of submissions, to limit submissions to 10 minutes. The tribunal has the capacity to make those rules. What, 2,400 complaints a year, all going directly to the tribunal, according to these guys? Horse feathers. A tribunal with these powers will make short shrift of due process for complaints. I'm worried about that. You may not be, but I'm particularly worried about that kind of stuff. I'm worried about the lack of the commission's role.

The Chair: Thank you, Mr. Kormos. The government side?

Mr. Berardinetti: Thank you for your comments. It was quite a thorough presentation. It was good to hear from a young lawyer who is practising in this area.

The Chair: Mrs. Elliott.

Mrs. Elliott: I also really appreciate your unique perspective as a legal practitioner in this area. I appreciate your comments with respect to the weakening of the commission's role in the new legislation and share your concerns.

Some groups have recommended that people have a choice whether to proceed directly to the tribunal or to go via an investigation with the commission. Could you just give us your thoughts on whether you agree with that or not?

Mr. Hameed: That's a very tricky question, in the sense that if we agree—I think at some level we will all concede that the public interest aspect of human rights is intrinsic, is very important—is this something that simply should be left up to the individual to decide on a case-by-case basis? What we do by relegating that to the individual is completely absolve ourselves, from the perspective of government, of ensuring and protecting that public interest role. I guess part of my submission—it's nuanced—is to say, how can we maintain that fundamentally, at a baseline level, keeping in mind concerns of

efficiency, and not simply say to that individual, "You decide whether the public interest will be upheld or not"? The public interest is a different and discrete thing from individual cases.

I don't know if I can expand for 30 seconds on this.

The Chair: Time's up. Thank you very much.

MARIA YORK

The Chair: Next up is Maria York. Good afternoon.

Ms. Maria York: Good afternoon.

The Chair: You may begin.

Ms. York: My name is Maria York. I appeared in front of your colleagues in February of last year. I spoke about Bill 119. At the time, I spoke on behalf of the Canadian Council for Injured Workers and I made certain proposals which are along the lines of what the new bill proposes.

Specifically, on behalf of a group of workers and myself, as a person who has a lot of experience with the Ontario Human Rights Commission and the Canadian Human Rights Commission and numerous processes of the tribunals, I recommended direct access to the tribunals for individual citizens. From my perspective, that is a requirement for the system of enforcing human rights in Ontario and in Canada to be compatible with the Universal Declaration of Human Rights and, based on a layperson's understanding of the charter, which is a very simple law, from my perspective—equal rights for everybody—the requirement under the Constitution that people who are pursuing human rights complaints have access to the tribunals.

I began the process with a complaint on behalf of a worker and his family in May 2000. This took me through a process that is incredible, unbelievable, and I came here to tell you how unbelievable this process is if you want to listen. I have some notes which I'll read to you, and perhaps I can even entertain you, because you look tired. I don't mean to entertain you at the expense of any person; therefore there will be no names here. I will just read the statements. I am not a lawyer. I am a person who was trained as an economist. I also have a background in comparative literature. I learned a lot about the law because of the pursuit of justice through the process of both commissions. I don't see the way lawyers see perhaps. I read the decisions, I read the acts and I try to understand them the best way I can. When I'm really stuck, sometimes I get help, but not too often because it's too expensive.

I'd like to just speak for about 10 minutes and then I'd like you to ask me questions, because maybe, based on what I will say, you will want to know more, and then I can give you all kinds of documents if you ever want to read the stuff. My file with the Ontario Human Rights Commission is 4,000 pages. My file with the Information and Privacy Commissioner, as a result of the practices of the Ontario Human Rights Commission, is about 500 pages, two binders that size. My file with the Canadian Human Rights Commission is 600 pages and keeps on

growing, because now I'm supposed to go to the Information and Privacy Commissioner with an appeal if I want to know what's in this file. This is not something that an average citizen expects when they read the basic descriptions of human rights in the code and the guides that you receive when you file a complaint without a lawyer.

I'd like to speak to you about effective judicial review of an administrative act. I'm just going to throw at you some arguments based on something that I found on the United Nations' European website, because the Ontario Human Rights Commission goes there with their arguments quite often, and I read their arguments. They seem to be quite different from what I experienced here in Ontario.

This presentation is not extremely well organized. I'm just going to throw toward you some of the arguments which I highlighted, because this is about 19 pages.

The second thing that I'd like to speak to you about is the conduct of the chair, vice-chair and members and what you have to propose. I'd like to suggest that there should be some mechanism for citizens to complain about inappropriate conduct of these individuals, the same way that you have for judges, especially because these people are appointed. If you feel that their conduct is inappropriate, you cannot really pursue an action against them. I don't see anything that's being proposed of this nature. Up to this point in time, if you had an issue with the commissioners, you didn't have any place to go to complain except to the Office of the Ombudsman. The Office of the Ombudsman cannot make any orders against the commissioners.

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I'd like to speak to you about a case at the reconsideration stage. There is, in my opinion, the possibility of an action against the government under section 15 of the charter. That is my opinion of a person who is not trained as a lawyer, who just studies the charter the way I see it interpreted by justices in their decisions. I will start with this part.

I gave you some information; I asked for some information to be distributed about legal assistance for ordinary working Canadians, not just people who are extremely poor and extremely disadvantaged but for working people who spend all of their money and therefore don't have money left for legal assistance if they need to get help from a lawyer.

If I have time, I will also speak about the definition of "disability"; otherwise I will just tell you—I probably won't have any time to speak about it, so I will just ask you to consider examining the definition of "disability," especially the inclusion of workplace safety insurance cases as a separate class. I don't see any need for that. A person with disabilities is a person who has certain functional limitations. Creating a group of people who are protected by workplace insurance versus, let's say, people who are disabled as a result of car accidents—why? Why do we have this? Why does the commission look at the people who are injured at work in a different

way from the beginning than somebody else who is just injured and disabled? This is incredible. I've been through this for five years, fighting and arguing.

I will start with part IV, which is the most important from my perspective. I'm lost in my own notes here. Sorry; I reorganized them at the last moment. Okay. Cases at the reconsideration stage, part IV. I am supposed to be speaking here about the decision by a commissioner that I am familiar with, because my case right now is at the reconsideration stage, which, according to the proposal in the bill, the way I understand it—because I didn't have a chance to consult with a lawyer. In Bill 107, transfer to the tribunal is being dealt with in section 10, I believe, of the bill, the amended act. I am specifically talking about subsection 52(2). It says, "A decision referred to in subsection (1) is final, subject to the right of the parties to apply to a court for judicial review."

Actually, I wanted to leave you with a question, because you will make recommendations about this bill and I understand some of you are lawyers. I gave you a chart—I'm not sure; do you have a copy of it? It shows you where a person in my position and many people who may be at the reconsideration stage right now would be after going through the process for four or five years. That means you would send all those people who have worked so hard—the reconsideration stage is only for victims, people who allege discrimination; it's not for the respondents. Therefore, no one would pursue this unless they have a strong belief about something wrong being done to them or unless they have a lawyer who would just—I don't know. I don't believe this is possible. I believe if people get to the reconsideration stage, they have a very valid reason to be there.

When you then force this particular group of people—I don't know if the decision to include this is based on the statistics or not. If you force only this group of persons pursuing a human rights complaint, which are all of the protected groups under the code, you are in essence discriminating against one specific group. Because they've managed to get so far into the process, forcing them to court—the entire process of enforcing human rights is for people who are not supposed to be going to court, who are supposed to be able to have their violation of human rights addressed by the administrative tribunals. So I really ask you to think about this section.

Certainly, I am speaking here about myself. As an individual, it will have tremendous impact on me because then I have to make the decision whether I am learning a civil procedure for the next five years and fighting through courts or whether I am just saying, "Thank you; goodbye. That process did not work for me." I would really ask you, especially the people who are former lawyers on this plan—and I understand there are a number of lawyers, yes? Am I correct?

Mr. Kormos: A couple over there.

Ms. York: Yes—that you actually consider this argument from a layperson. I am not a lawyer, but this is how it looks to me. It's unfair to people who work so hard: five or six years.

I wanted to throw another question at you. "Application by person," subsection 35(1)(a), "within six months after the incident." Why six months for the people who are victims of discrimination? Some lawyers from the Ontario Human Rights Commission presented their factum in *Pritchard versus the Ontario Human Rights Commission*. The case was decided by the Supreme Court of Canada. I read the decision; I made an effort to read the factums of the lawyers working for the commission. They argued that the discrimination is sort of like a civil tort action. Why, then, do people who are being subjected to a violation of their rights as other forms of torts, resulting in a violation of their rights, have a different statute of limitations than people who are being described by the staff of the commission, whom I'm sure are putting input in for this in some way, as victims of torts? This is in the submission. The lawyers' submission I do not know, but the name of the submission is the memorandum submitted by the Ontario Human Rights Commission to, again, *Pritchard versus the Ontario Human Rights Commission*.

This is again from the perspective of a person who does not agree with this, something that I'm asking you, as the elected officials representing people who live in your constituencies, to consider. Because I didn't have a chance, I may speak to my own MPP about this.

How much time do I have?

The Chair: You have eight minutes.

Ms. York: Eight minutes? Okay. I'll try to cover some of the key arguments. This would actually address an argument which you raised on the tribunal.

I should say I like the proposal—I said it at the beginning—of allowing people access to the tribunal, because at least this will allow people who do not have lawyers and who make the effort to become informed about the Canadian system of justice to go as far as the tribunal would allow them to go, with certain assistance from the staff and whatever the design will be at the end.

I wanted to just throw out some of the things that I've selected. This would address the issue of the tribunal not really having any rules. What do they have in Europe? There are many people from Europe living in Canada—many. I'm European, therefore I have a certain level of understanding of European law and perhaps I understand it better than the Canadian law, because I never heard any legal issues in this country. In a country like Portugal, a tiny country, when they joined the European Community, they created a code of administrative procedure so that an ordinary person would have some guidelines to go by.

My biggest problem with the commission was that there were no guidelines to go by when I started the process. That means that the lawyers representing other parties would have known all the tricks, all the games, all the behind-the-closed-doors, how you do it, how you get away with it, how you delay the process. I didn't, and the reason that I didn't is because I read the guidelines provided to me, the complainant, by the commission: "This is how you follow the process." Well, I was a fool to do this. If you ever have your constituents coming to

you and complaining about the process of these tribunals, the advice I would give them if I was in your position is, "Don't read the guidelines. Go and speak to a very good lawyer and ask him to interpret these guidelines for you." At least then you can navigate through the process.

Getting rid of the function of the commission which gives us adjudicative power, authority to decide, and giving it to the competent tribunals—I hope competent tribunals—and I hope you as politicians would ensure that these people are competent. That is, in my opinion, the only way to go.

Let me just read to you some of the things I've selected. I'd like to allow at least five minutes for your questions, because I want you to ask me about the process of the commission. So please stop me when I go over the next two minutes or so.

I just wanted to read something.

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The Chair: If I can interrupt. How much time did you want for questions?

Ms. York: Well, I don't know. Maybe five minutes. That's probably all that is left right now.

The Chair: You have six minutes, so if you want to stop whenever in the next couple of minutes?

Ms. York: Okay. Let me just select what is the most important. I was going to talk about my personal issues from personal files. I can give this to you. I am not going to make a record of this.

I'm going to talk about general issues: definition of disability or some of the proposals regarding supreme administrative tribunals in Europe. Which one would you prefer that I speak about?

Interjection.

Ms. York: Whichever? Okay.

Perhaps you didn't hear from too many people speaking about a supreme administrative tribunal. I was planning to write to the Attorney General to propose this. I feel this would be a good idea for Canada, perhaps not right now, not at this stage, but maybe in the future when we have an administrative process that allows people to essentially—an administrative process, from my perspective, brings justice closer to the people, brings justice, the law, to the people, the kind of law that ordinary people need to rely on, depend on, that they are protected by. The rest of legal statutes or whatever is for other people. I'm just talking about average working citizens.

What they have in Europe is a supreme administrative tribunal. You get stuck at the level of one of the tribunals you are dealing with, and then you can appeal the decision through the process, which is a continuation of the administrative process, but it's a supreme tribunal. I am not sure if this system would work now, but I would ask you to consider that.

According to the statistics available everywhere, from Statistics Canada and organizations that study labour movements and the changes in Canadian society, an extremely high percentage of immigrants will be part of the Canadian labour force. Human rights are very important

to protect certain groups of people—disadvantaged groups, persons with disabilities—but we also have to remember that human rights are designed to also protect working people, people who come to this country, who are from outside who don't happen to understand the system. For them to have access to those tribunals, you need to have a system that doesn't force them to go to court, because then what these tribunals can do if they decide to abuse their authority in an indirect way is force everybody to court whose cases they don't want to examine. Then these people have to stop pursuing whatever they were pursuing.

The Chair: Ms. York, you have three minutes remaining, so if you want to give each side a minute each?

Ms. York: Yes. So basically, I just want to leave you with this idea. In Europe, they had a meeting of the ministers. Then certain European countries adopted a code of tribunals procedure. I think, from my perspective, navigating through the jungle that the commission has created and the stories that I will possibly submit by e-mail, it's incredible. So please consider this, at least something, that maybe next time the government has a chance to examine something or create new statutes. Maybe that would be something to be considered.

Now please ask me some questions about my experience, if you wish.

The Chair: Okay. Briefly, the government side.

Mrs. Van Bommel: You mentioned the supreme administrative tribunal. Is that the ultimate tribunal, or is there an appeal mechanism for that tribunal?

Ms. York: The way I understand it, different countries adopted different procedures. So it wasn't a requirement for the countries that joined the European Community. I was there. I was in Portugal in 1991. Portugal was going through the process of what you are doing right now: changing all kinds of laws to make them compatible with, in their case, the European Community.

These administrative tribunals allow people to go through the administrative process all the way. So you don't appeal to the Supreme Court of Canada, where you have a different process: You require a lawyer, you have to learn a new procedure, you have to follow all these technical rules. You have a simplified process. Don't ask me for any details, because I haven't lived in this part of the world for a long time. I understand that certain former Communist countries, like Czechoslovakia, also adopted it, I understand. So this is something that would be of interest to you. Maybe some of the researchers from the department could get some more information about it. I just researched it very briefly.

The Chair: Thank you very much. Mrs. Elliott.

Mrs. Elliott: I'd just like to thank you for giving us something of an international perspective, Ms. York. Certainly, we're looking at ways to make the system more accessible and user friendly for everyone. Some of your comments and thoughts with respect to the administrative tribunal are very interesting and something that we would definitely consider.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. York, I'm so grateful to you for coming to the committee. I've got a motion I'm going to be putting tomorrow to get Keith Norton, Barbara Hall, commissioners and management from the commission here in front of the committee. This flow chart is a very useful tool for us. What two things would you want us to ask those people about the process in the commission and about problems with how the commission works?

Ms. York: First of all, if you look at the beginning, you go to the intake—are you talking about trying to maintain the commission in its current—

Mr. Kormos: The commission, not the tribunal.

Ms. York: In my opinion, the commission should not have adjudicative authority to decide on individual rights. The commission itself refers to discrimination as a violation of a civil right and allows people then to pursue it; a criminal can fight for his rights directly with the courts and file a statement of claim. If the commission wants to continue its existence and support certain issues of great importance to the public—let's say that I discover something but it's not me who's being affected by it. I come to the commission and say, "Listen, there's a problem there. No one has brought this to your attention. Can you look at this and examine whether it may be a violation of human rights?"

This is how I see the function of the national—they refer to themselves now as a national human rights institution. Now, be careful here. How many national human rights institutions are we going to have? If every one of them calls itself a national human rights institution when they appear in front of the United Nations, then perhaps we should design a common ground for what these national institutions will be speaking about at those international forums in terms of Canadian human rights.

Commissioner Norton is very familiar—

Mr. Kormos: Go ahead.

Ms. York: Commissioner Norton and Barbara Hall, through my process of pursuing human rights—

The Chair: Ms. York, thank you very much. Your time has expired.

Ms. York: You can obtain this information.

The Chair: Thank you for your presentation.

Ms. York: Thank you very much for your attention. I was really glad to speak to you on those issues.

CHINESE CANADIAN NATIONAL COUNCIL, OTTAWA CHAPTER

The Chair: The next presenter is the Chinese Canadian National Council, Ottawa chapter.

Ms. Linda Szeto: Shall I start?

The Chair: Yes, go ahead, and if you can state your names for the record.

Ms. Szeto: Good afternoon. Thank you for allowing us this opportunity to appear in front of you. I am Linda Szeto. I'm the vice-president of the Chinese Canadian National Council, Ottawa chapter, or CCNC Ottawa for short. My colleague here is Jonas Ma. He is the president

of our chapter. We have another board member here in the audience to support us.

CCNC Ottawa is a human rights advocacy organization which champions the rights of Chinese Canadians in this region in particular and the rights of all Canadians in general. Our national organization is at the forefront of the Chinese head tax redress campaign, for which the current federal government made a formal apology and compensation to the surviving head tax payers and spouses this past June. We have written material—a one-pager, the blue sheet—that gives you bullet points about who we are.

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On behalf of CCNC Ottawa, we are here to outline to you our profound concerns on the fundamental flaws of Bill 107 and our proposed amendments to rectify this bill.

The Human Rights Code enables citizens in this province to concretely exercise their rights and freedoms enshrined in our Constitution. The Human Rights Commission is the key legislative arm to enforce this code and to protect the public interest. We commend the McGuinty government's intention to improve the current human rights enforcement system with the introduction of Bill 107. However, this proposed bill is fundamentally flawed. Instead of improving the system, this bill substantively weakens the Human Rights Commission by eliminating its investigative power and its universal access by victims to publicly funded prosecution of human rights complaints. This bill will not do what the government intends or promises; only to its contrary. Here are the reasons:

(1) Bill 107 takes away our current right to publicly funded investigation by the commission of all non-frivolous human rights complaints. Complainants will be forced to either do their own investigation or pay for an investigator. We Chinese-Canadians have learned that discrimination has many forms and shapes. Explicit, in-your-face racism is not as common today. Rather, it has given way to more covert, subtle and hidden systemic discrimination in the communities, social services and workplaces which are difficult and complex to prove in a court of law. It requires expert investigators to systematically gather evidence and information to support the claims. The current commission has this expertise, and by abolishing the commission's statutory investigative power, this government is saying to the poorer members of our community—and we do have poorer members of our community—"You are on your own. Human rights are for those who have the money and resources."

(2) This bill further accentuates this fundamental flaw by eliminating the complainants' right to publicly funded legal representation when their complaint is referred to the tribunal. In this proposed bill, complainants will have to hire their own lawyers to bring a claim in front of the tribunal or represent themselves. Bill 107 does not propose an establishment of a legal support centre nor has the government provided any details on any structure or resources to address the abolition of a complainant's

right to publicly funded legal representation, and this legal representation is a fundamental underpinning of a fair and equitable human rights process and enforcement.

(3) Bill 107 gives the tribunal unprecedented power to override the due process provisions of the Statutory Powers Procedure Act. What is the purpose of a Human Rights Tribunal without due process? Can there be justice when hearings are done in haste and behind closed doors and without adequate legal representation, particularly for the complainants?

(4) Bill 107 allows the commission the power to charge user fees and the complainants can be liable for their opponents' legal costs at the Human Rights Tribunal hearing if they lose. Losing a claim does not necessarily mean that discrimination didn't happen or that the complaint is without merit. Awarding the legal costs to the complainants in these situations is adding salt to the bleeding wound; the dressing on the cake that says human rights are only for those who can afford it.

(5) Bill 107 permits the tribunal to order the parties into mediation, whereas the current system provides mediation services on a voluntary basis. Mediation is not appropriate when parties do not agree to partake or where there is an unequal power hierarchy between the parties. And I think there are lots of studies that underline this fact.

(6) This bill proposes appeal of the tribunal's ruling only if it is proven to be patently unreasonable, which drastically limits the current rights of appeal.

(7) Furthermore, Bill 107 broadens the scope in which the tribunal can dismiss a complaint without hearing.

(8) Contrary to the original aims of resolving systemic discrimination and protection of public interest in the establishment of the Human Rights Commission, Bill 107 dramatically reduces the commission's ability to achieve these aims. Since the commission will no longer receive individual complaints, it will not be able to monitor complaints for the systemic nature of these complaints nor for the public interest. Furthermore, the commission has to apply to the tribunal, which then determines if the commission can participate at its hearing. The commission can launch a systemic complaint but the tribunal has the power to dismiss the case. Stripping away these functions renders the commission impotent and irrelevant, even in its maintained role of public policy, advocacy and public education. If you don't know the complaints and you don't hear about them, how do you know and how do you determine whether they are systemic or not? If you do public policy and public education, you need to know, you need to have the information.

Given these fundamental flaws in Bill 107, CCNC Ottawa strongly recommends that the government drop this flawed bill and start again. We are supported by our fellow CCNC members in Toronto and our chapter members across Ontario, including other organizations and individuals, and some of them you have heard here today; organizations such as the Accessibility for Ontarians with Disabilities Act Alliance. If the government

chooses to press on with this flawed bill, CCNC Ottawa strongly recommends the following amendments:

—Reinstate the statutory investigative power of the Human Rights Commission and give the complainants the option of bringing their cases to the Human Rights Commission for investigation if they so choose.

—Reinstate the statutory guarantee of publicly funded lawyers for complainants at all tribunal hearings.

—The tribunal cannot be exempted from the Statutory Powers Procedure Act.

—Reinstate the complainants' right to appeal to the court if they lose at the tribunal.

—Delete the user fees. We recommend that a penalty fee be charged to complainants whose claims are found frivolous as a deterrent; so consideration for the monetary side.

—Legal costs cannot and should not be awarded against the complainants when they lose the case, and that the court may not award and should not award against the complainant the legal costs of a judicial review application or an appeal. In the public interest and to protect the public interest, we recommend that the commission must and should continue to absorb the legal costs for the complainants.

—Limit the grounds under which the tribunal can dismiss a claim without hearing. Furthermore, all meritorious claims should not be dismissed without at least first holding an oral hearing.

—Mediation services must be voluntary and with consent from all parties.

—To protect the public interest, the Human Rights Commission must have the statutory power to initiate its own complaint within the code jurisdiction, without any additional requirements; the right to intervene in any case before the tribunal; and the power to require the tribunal to forward to the commission a copy of every human rights complaint filed with the tribunal.

—In the public interest, the commission must have the power to seek remedies for past discrimination, as well as present and future practices, including all current remedies available under the code as well as any additional remedy power required to prevent the continuation of discrimination prohibited under the code.

Here I want to add, because I just heard one of the submissions about genetic procedures, that these are the future practices I'm talking about, when you have technologies that are marching ahead. Sometimes we are not even aware of how these things could affect us. So it's critical that we have that.

—The commission must have the power to monitor, audit and enforce compliance with tribunal orders.

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In conclusion, CCNC Ottawa reiterates that Bill 107 is fundamentally flawed. Good intention is not enough. Bill 107 privatizes discrimination and the pains of less fortunate members of our communities. This bill forces less privileged citizens to face the indignity of discrimination by themselves and to fend for themselves at a time when they most truly need a universal, accessible, publicly

funded human rights enforcement system to defend their rights and to protect the public interest.

Today we are being challenged by resurging racism in our province and in our country. It is the time and the opportunity for this government and Ontario to take leadership, as it did in the past—and I want to underline that, as it did in the past—to build a strong, vigorous, universal, accessible, publicly funded human rights enforcement system to protect the public interest and the rights of its citizens.

Hear us today and hear us well. Hear our critiques of this bill and our proposed amendments, which would rectify it fundamentally. We thank you for listening to us and we shall look forward to seeing the changes in a vastly revised bill. Thank you very much.

The Chair: Thank you. There are about two and a half minutes each. We'll begin with the official opposition.

Mrs. Elliott: Thank you very much, Ms. Szeto, for your comments on behalf of the CCNC. You've raised a number of important points, some of which we've heard from other people. I'd just like to pick up on your one comment with respect to the role of the commission, that if they don't hear from some of the individuals, how will they be able to determine whether there is systemic discrimination; and that it's important that they be in the loop, so to speak, with respect to the information. I think that's very important advice that you're giving us, so thank you very much.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. Szeto and Mr. Ma, thank you very much. I am impressed with the fact that you are among the few people who have pointed out the extraordinary provisions that allow the government to exempt the tribunal from the Statutory Powers Procedure Act. You heard me raise this a couple of submitters ago with Mr. Hameed, the lawyer who was here. Take a look at this, friends. Subsection 38(2): The rules of the tribunal prevail when there's a conflict between those rules and the Statutory Powers Procedure Act. Subsection 37(2): "The tribunal shall adopt the most expeditious method of disposing of an application on the merits." That has so much the quality of newspeak because, at first blush, it sounds like, "Oh, we'll deal with these complaints speedily"—"the most expeditious method"—and then the tribunal may make rules to "limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions." Good God, this is frightening, dangerous stuff. This is not stuff that happens in democratic countries where due process and natural justice are the underpinnings—they are, aren't they?—of our adjudication systems. This is stuff that comes out of some tinpot dictatorship; it really does. It means that complainants can be told, "You make your submissions in five minutes on an affidavit," because that's what the rules say, or you can't appear at all. You can't cross-examine. Very frightening stuff, and civil libertarians and people concerned about human rights and protecting human rights should be very

concerned about this. I'm so pleased that you've chosen to highlight that. I am extremely frightened by this. This sets us back years. Thank you kindly, folks.

The Chair: The government side?

Mr. Zimmer: No, nothing here.

The Chair: No comment? Thank you. Thank you for your presentation.

THERESE LEFEBVRE

The Chair: Therese Lefebvre, good afternoon. You may begin.

Mrs. Therese Lefebvre: Members of the panel, I am very grateful to have been given this time to meet with you today. You have received from Kevin, hopefully, some information regarding what is happening to me.

I learned through TV, which I watch every morning, when you have the panel, and the session in the afternoon when they are debating in the House. Bill 107, the Human Rights Code: I read it and then I said, "Well, this is my chance, with everything that I've been going through for 15 years and fighting for 15 years." You have a chance to read it and ask me questions. The only thing I would like to read is, and I think you have a copy of this:

"Ladies and gentlemen,

"Please find attached the history of a deteriorating health problem since my operation on March 2, 1990, by a negligent and incompetent Dr. Puranik. Since then, I had nothing but pain and suffering and am unable to perform any kind of manual or clerical work whatsoever. I must have the use of a cane to help me control my balance when walking.

"I have pleaded my case twice with the college of physicians, but was rejected on both occasions.

"I now beg you to peruse through the information that I am providing you at this time and hope that you see fit to accord me a just decision which would include full compensation for the tremendous amount of pain and suffering that I am still experiencing which was caused through no fault of mine but by the lack of competence, honesty of a negligent physician."

I have not written very much because I'm here as a person that has been suffering for 15 years. I was a healthy person. "Human rights" for me means that something should be done for me. I am not a mobile person. I have to have different persons take me wherever I want to go: doctors' appointments, everything. This has been going on for 15 years. I haven't been there at all for my two girls for six years because of physiotherapy, which I needed to start walking again.

I was refused in 1996 by the college of physicians because I wasn't strong enough; I was told by a lawyer who was paid by the province that I would be destroyed mentally if I would go on with the case. So I just let it go. But in 1999, something happened and I had to have another surgery, the third, for the same L5-S1 disc, which was never removed to start with in 1990. It was taken out in 1999 in Ottawa.

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I have done everything in my power. I'm not a rude person; I'm a quiet person. I was a good worker all my life. I know that there is justice. Human rights—that bill just went to my heart, and I said, "I'll phone and see if they will see me or let me have a chance." I've been fighting three years to be with you and I was told that I was not allowed to speak to anybody—no committee, no tribunal, nothing. I can't go out of the house without having somebody with me. This is for the rest of my life. I cannot visit my daughters when I feel like it or I would like to. I am at home since that day. It was not easy. A physiotherapist spent six years to put me back on my feet, just to find out three years later that I couldn't get better because the L5-S1 disc was still there.

I have tried to understand through MPs, through government, through Ontario health profession boards. I have done everything. I'm not here to have pity; I'm here to have justice. I am here to have the right to have your opinion. You can ask me any kind of question. I have nothing to hide. I was well in 1990, and one month after that my life was over—no career, no nothing. Today I'm here to plead for your support and to answer questions that might not be clear for me and maybe it would help you too. I'm sure that I have lots more paper, information, but I've been trying to get them back to me by an MP and it was never returned to me.

I hope that the Human Rights Code that I have read—and I have phoned, and I was very pleased with the people who answered the phone and phoned me back that I had this chance. I say thank you.

I never thought I would end up this way. I thought I would be—I am a fighter. I have worked hard all my life since the age of 10. When you're told that your life is over physically—I was mentally, physically and emotionally stressed for 10 years. It was hard for me not to be there for my girls because it wasn't my fault and it wasn't their fault.

I know a lot of things. Doctors are protected. Lawyers protect lawyers. I know all those things. I read a lot and I hear a lot on TV. I listen to everything that has to do with politics. For me, it's not—when you said "20 minutes," for me, it's a lifetime. So 20 minutes is very good for me to be here. If this is not enough for you, I will have the MP with—it's a committee that has everything and they haven't done anything since a year and a half in Toronto. They've been saying to me: "Well, we haven't made any decision." But it was never looked into.

For me, for today, I can give you more information that you already have. I hope that it was enough. If not, I will try to get the rest and send it to Kevin, because it's bigger than what you have. Fifteen years is a lot of paper. All that money that was spent for me was a waste of money, from the government: physio, doctors, appointments. I had 25 epidurals. I had some needles. I can't find the name—to your spine; I had 25 of those—spinal taps to find out what went wrong. My nerves are really bad now since all those injections. The nervous system is—I had to prepare myself two days to be here. I had to

just plan it and say, "It's going to be all right." There are MPs and there are people from the tribunal, I think, here.

I speak French but it's easier for me in English. If there are any questions, this is what I have to offer you.

The Chair: Thank you very much. There are about three minutes for each side, beginning with Mr. Kormos.

Mr. Kormos: Ms. Lefebvre, you're right: Fifteen years is a long time, especially when you're burdened with the discomfort and the pain and the disappointment. You have the letter here from your MPP, Jean-Marc Lalonde. He did his best for you—he did—back in 2002. I see tragically the letter from 1996 from the College of Physicians and Surgeons; it wasn't going to pursue your complaint against the doctor. I see the letter from Clare Lewis, the Ombudsman, who did what he could, but as he described in his letter, the law was clear. Clare Lewis, the Ombudsman, did his best for you, but it wasn't anything that was going to change your reality. So here you are. You're in front of a committee now of the provincial Legislature. We're members of the opposition. There are some powerful people on the committee: the parliamentary assistant, the committee Chair. We've all heard you. I don't know what more can be done; I don't. I'm prepared to put our heads together with these other people and see what can be done.

My concern is that maybe nothing more can be done. Maybe the system just doesn't work any more for someone who has been victimized the way you have. That's my concern. It's not very helpful, is it?

Mrs. Lefebvre: No. But I'm just going to say, you talked about Clare Lewis. The disappointment in that is that I had bought my tickets and I was going to Toronto.

Mr. Kormos: I see that. Yes, you were ready to meet with him.

Mrs. Lefebvre: Yes, with my husband. The day after, I get one phone call to tell me, "Are you ready to leave?" An hour later, they tell me—

Mr. Kormos: That is bizarre. I don't know the explanation for that.

Mrs. Lefebvre: I know the explanation. The explanation is that there was another Ombudsman who worked very hard and he reopened my case on February 21, 2003—Clare Lewis reopened the case. On December 18, 2003, I get the call to be in Toronto and meet with Clare Lewis. One minute I'm talking to Helen Jennings. She tells me, "Have you got your tickets?" and this and that and I said, "Yes." "Okay, that's fine. We're very happy." An hour later, Jean-Marc phones me and he said, "It's been cancelled." Then Roch McLean, who works in the Ombudsman's office, phones me and says, "Why did you refuse to go? You told them it's a waste of time for you to be there. And don't call me back, because I'm going to lose my job." Those were the exact words.

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I should be compensated for the damage that was done to me physically, mentally and emotionally, because I wasn't there for my kids. After this happened, I had no energy at all—and I know what you mean. For me, the system can see through this, but it's like it's not im-

portant. If you have a code and Bill 107 containing human rights, I should be in front of a tribunal or whatever and still have a chance to be compensated for what was done to me.

Mr. Kormos: I think that is your most important point.

Mrs. Lefebvre: Yes.

The Chair: To the government side. Any questions?

Mr. Berardinetti: I just have one question.

Thank you for your presentation. There's a lot of information here and I'm not sure what the answer would be, but I know that you did have a lawyer represent you at one point.

Mrs. Lefebvre: Yes, Marc Marcotte.

Mr. Berardinetti: Of Charbonneau Smith Inc. Did they represent you before the College of Physicians and Surgeons when you went there?

Mrs. Lefebvre: No, I didn't go. He was paid by legal aid. It's still government money. He's the one who told me, "You can't go there. You're not physically able to go through this, because they will destroy you." I didn't know what he was talking about then. I went back to see him with this, because the paper from Ottawa said, "We've done surgery on this 52-year-old woman, the same surgery. It wasn't scar tissue; it was a disc that was there," the same disc that was supposed to be taken out 10 years before. He said to me, "If you would have had that letter, you'd be compensated for it." Now he's not a lawyer. He's a judge for the province of Ontario.

I'm not stupid. I'm an intelligent woman who could have done a lot in this society, which I did before this all happened to me.

Mrs. Elliott: There's no question that you've gone through a really difficult time in the last 15 years. As my colleague Mr. Kormos has indicated, I'd like to say that we would be able to get you that compensation, because you've clearly had a horrible time, but I don't know that that's something we would be able to do.

If I can offer you any consolation, I think that hearing from you, as we've heard from so many other people about their frustration in dealing with—in your case it's some other organizations, but we've also heard that with respect to the commission. If we can eliminate that and make it a completely fair process so that everyone has the right to be heard in a fair manner and with an appropriate hearing, then that's certainly what we're striving to do. So your presentation has been extremely helpful to us in that, and I want you to know that we really do appreciate your being here.

Mrs. Lefebvre: Will I be hearing from you?

The Chair: I don't think that's the purpose of these hearings.

Mr. Kormos: Chair, on a point of order: This woman has gone out of her way to come here. She might not have fit perfectly into the Bill 107 slot, but she has presented a very poignant, painful story. If I could prevail, without pointing fingers—we've listened to her. Mrs. Elliott very clearly said that although we may not be able to help you, your presentation may help other people in

terms of how you've influenced how we look at things and hear things.

Can somebody, perhaps the PA's office, take it upon themselves to simply respond to Ms. Lefebvre in writing, even if we agree that all of the avenues are exhausted, to acknowledge that she's been here? Can somebody please do that? Would you do that?

Mr. Zimmer: I'll speak to you away from the table, at the back here, and see if we can—

Mrs. Lefebvre: Thank you very much.

The Chair: Thank you for your presentation.

SOUTH OTTAWA COMMUNITY LEGAL SERVICES

The Chair: The next presentation is from South Ottawa Community Legal Services. Good afternoon. You may begin.

Ms. Chantal Tie: Thank you very much. Unfortunately, I wasn't able to be here earlier. I think I would have benefited from some of the other discussions, so I hope that what I have to say isn't too repetitive for you. I have provided some materials, which I believe you may have by now.

I'm here representing South Ottawa Community Legal Services, which is one of the 79 legal aid clinics in Ontario. We're funded by Legal Aid Ontario, but we're governed by independent boards of directors, and we have served low-income Ottawa residents in the south of Ottawa since 1987. On a personal level, I am an immigration and refugee lawyer and was the director of the clinic from 1987 until last year; I'm now one of the staff lawyers at the clinic. I have an extensive background of more than 26 years' experience doing various types of human rights litigation as well as immigration and refugee law, all of which I have done through the clinic.

Our clients represent the most marginalized and disenfranchised communities in Ontario. What that means in south Ottawa is that we have a large number of immigrants and refugees, a large number of single parents, mostly women, large numbers of seniors and the disabled. These groups are representative of the most vulnerable groups, precisely the groups that the Human Rights Code is designed to protect from discrimination.

Our mandate is set by the Legal Aid Services Act, which defines "clinic law" as including human rights law. Our clinic policy itself sets criteria for case selection which include human rights. We have a history of fulfilling that mandate with test case litigation in many areas, some of which include, in recent years:

—discriminatory credential recognition challenges for foreign credentials;

—discrimination in social assistance regulations, including the "spouse-in-the-house" litigation and the lifetime ban, which were the Broomer case and the Falkiner case, as well as the inquest in Sudbury into the death of Kimberly Rogers;

—discriminatory immigration requirements for landing in Canada; and

—discriminatory mobility restrictions for people in institutions with disabilities.

When I went back over the clinic records since we opened, I wasn't surprised to find that we had never filed a complaint under the code, despite our mandate and our concern for human rights. What we have done is used the charter in the courts and we've used the code in the courts outside of the complaint process. This is despite the fact that we strongly believe in the protection that the code offers for our clients. Indeed, we've used the code in other tribunal proceedings to protect our clients, such as before the Ontario Rental Housing Tribunal to prevent the eviction of tenants with mental disabilities where the landlord has failed to accommodate up to the point of "undue hardship," at the Social Benefits Tribunal to argue discriminatory treatment of the disabled, and in the Divisional Court to argue that teacher credential recognition procedures are discriminatory.

1700

The Chair: Ms. Tie, if I could just interrupt you, can you slow down the pace for the interpreter?

Ms. Tie: Sorry.

We've even used the threat of code complaints to organize public housing seniors around the issue of accessibility, knowing full well that if the organizing, lobbying and public shaming that we were engaged in with the public housing institutions were not successful, a complaint was unlikely to succeed for our clients.

Why don't we use the code? The answer is simple: Our clients are extremely vulnerable. Their human rights needs are often urgent, related to income supports, housing and other essential services. They need a timely resolution. What possible use is any decision to them rendered three, five or even eight years after the fact when it relates to essential services? The current process is simply incapable of delivering anything of use to our clients. What use is a 4% to 6% referral rate, which I understand is the rate of the commission?

Unfortunately, the current process that we are engaged in has serious limitations for our clients. Litigation before the courts is extremely expensive, making it inaccessible to our clients because we simply can't afford it either as legal aid. The opportunity to appear before the courts and before an expert tribunal that could potentially provide people who are both sensitive to human rights issues and trained in human rights is lost. We don't get that in the courts. That's a serious limitation.

Because of the tremendous costs and complexity of litigation in the courts, we can only concentrate on large systemic issues which have an impact on large numbers of individuals. We have to make strategic decisions, leaving individual acts of discrimination, particularly in the areas of essential services, without remedy. And all acts of discrimination which occur outside the jurisdiction of other tribunals also go without remedy.

Last year, in co-operation with CERA, the Centre for Equality Rights in Accommodation, here in Ottawa we conducted a series of focus groups on discrimination and housing, which is an essential service. We conducted

four focus groups: one with street youth, one with psychiatric survivors, one with young parents and pregnant mothers, and one with agencies which provide services to all of these vulnerable groups. What the focus groups demonstrated for us was that despite significant concern about discrimination and lots of direct experience with discrimination, no one had used the formal human rights complaint process. Again, why not? The process takes too long; the process is not fair in the sense that there's just a far too low referral rate; there's a lack of resources and assistance available; and many people were not even aware of the possibility of using the code.

We support Bill 107. What do we see? We see tremendous potential in Bill 107, potential to really assist our clients in a meaningful way. We see the potential for a system which would provide the tools that our clients need to address discrimination in all its forms, which would give access to a process superior to the current process in Ontario and superior to the current court or other tribunal process we are currently using. I say "potential" because there are some absolute, bottom-line requirements which, if not implemented, will mean our clients will continue to be denied the benefits of the code protections that they're entitled to.

What would it take for us to have confidence in the system and to actually have our clients use it? It would take adequate resources for the tribunal. Our clients need resolutions within a reasonable amount of time. Inadequate resources cause delays and significantly undermine the integrity of the process. We fully support direct access through the removal of the gatekeeper function, which we see as both paternalistic and discriminatory in itself.

We need adequate funding for legal and other representation. Our clients need that assistance to prepare and advance their claims. That assistance must also include adequate resources for accommodations which they will inevitably need. We welcome the Attorney General's stated commitment to the third pillar in the human rights system, which is full access to legal assistance, but this commitment must become a legal obligation. All claimants who are victimized by illegal acts of discrimination should not have to bear those costs of righting the wrong. The same way we protect our society from criminal violations, we must protect society from discrimination. It is a social commitment, not an individual cost.

Thirdly, appointments to the tribunal must be independent. A tribunal or a court is ultimately only as good as its decision-makers. Under the current system, tribunal members are cabinet appointments, and unfortunately governments and cabinets are often beholden to individuals and power brokers. Tribunal appointments are seen as a suitable reward for services rendered. Our clients need expert and sensitive decision-makers. They need a tribunal which is representative of our community in all its diversity, with a demonstrated commitment to human rights and active involvement and lived experience in human rights. This can only mean that we need a legislated appointment process which is independent, trans-

parent, competitive, with stated criteria for appointments that include expertise and sensitivity and demonstrated commitment to human rights. Without these controls, the tribunal will not serve to advance human rights, but only to reward the party faithful, at the expense of the most vulnerable in our communities.

I've included with my materials a joint submission from the community legal aid clinics, which I've distributed with my notes. It contains more technical discussion and 11 specific recommendations we are making which will improve, in our opinion, Bill 107. They are found on the last page of the submission.

If I have a minute, I would like to address Mr. Kormos's concerns before I'm finished on this.

The exemption from the Statutory Powers Procedure Act: We actually don't have a problem with the exemption. I would refer you very briefly to what I found in the Association of Human Rights Lawyers' submission. At point F, they talk specifically about the necessity for flexibility. I think that other tribunals could provide the Human Rights Tribunal with some guidance so that you don't get draconian rules such as the ones Mr. Kormos has been proposing, like extensive discussion and consultation on the drafting of rules. I've been involved extensively with the Immigration and Refugee Board in a number of their rules-drafting exercises. I would suggest that is an adequate check upon rules which could be drafted in a draconian manner. I think that's far preferable than requiring the tribunal to continue to abide by all of the Statutory Powers Procedure Act, which I would suggest is not the type of procedure that would necessarily best serve our clients under the circumstances.

I would also agree that when you look at whether you change from an appeal to the courts to a judicial review procedure, what judicial review does is, if you adequately structure your tribunal with expert members, as we've recommended, then judicial review gives them some measure of ability to exercise their expertise, as opposed to having courts which are not expert in human rights overturning good human rights decisions, which is what we see at the present time if you look at who's appealing, who's winning and who's losing. Thank you.

1710

The Chair: Thank you. We'll start with the government side.

Mr. McMeekin: Ms. Tie, thanks very much. I'm not a lawyer, so I don't know all the legal ins and outs, but there's something I do know as one who has been, like you, in the trenches with some of our vulnerable folk: Vulnerable folk don't get to throw wine and cheese parties at Queen's Park to lobby people. The cards really are stacked against those who so often don't have a voice. So I'd simply want to say to you that I appreciate your taking the time to be so thorough and thoughtful in terms of your recommendations. I really am hopeful—perhaps not optimistic at the moment, but hopeful—that some of this is going to sink in, that we will get to a tribunal that would be quicker, fairer, better funded and would really respond to the challenge that you've issued.

I appreciate what you've shared. I want you to know that there are people in all three political parties who really do care. It's tough, but I want to make sure the AG sees all of their briefs, but particularly your very thoughtful one, because you're in the trenches every day and it's good to hear from you. Thanks.

The Chair: Mrs. Elliott?

Mrs. Elliott: I too appreciate your comments, Ms. Tie, being a practitioner in the area for a number of years. I do have some additional questions with respect to the exemption from the SPPA, but I suspect that my colleague will ask some additional questions. I wish we had more time. I'd like to know more about that.

You have indicated your support for the principle, for the potential of Bill 107, yet there are some pretty fundamental, significant concerns that you've still expressed with it, all of which is predicated, of course, on the idea that the tribunal will actually hold hearings and will allow people to get to that stage and have a hearing. But, as you know, the legislation does not provide for that. Do you have any comments on that?

Ms. Tie: Yes. We've actually recommended—I didn't keep a copy of my own material—that there always be a hearing, even for a dismissal. This is the practice at the Immigration and Refugee Board you're entitled to, and other tribunals. There's nothing that would prevent holding a hearing when there's going to be a dismissal, and that's one of our recommendations, that there be some type of hearing.

Mrs. Elliott: Thank you.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. I wish I had—you're a person of great faith. Maybe I've lost my faith along the way. Maybe I never had any to begin with. Maybe I'm just cynical about governments. But when I see the provisions of the act, for instance, the rules may "provide that the tribunal is not required to hold a hearing," that's the same little rule-setting power that says they can exempt themselves from the Statutory Powers Procedure Act. You see that it causes me concern when governments put that in their legislation, and then when they promise not to use it, because I've witnessed those promises. But fair enough; we'll disagree on that.

I'm interested, however, in concerns you might have about the true arm's-length status of the whole Human Rights Commission. Reference has been made to the preferability of having a Human Rights Commissioner. You talk about beholden. You see, the commissioner is beholden to the government of the day, because he or she is hired by the government of the day, it just occurred to me—the Environmental Commissioner; the Ombudsman; Ms. Cavoukian, the Information and Privacy Commissioner.

Ms. Tie: Yes. One of the recommendations, certainly, also of the Association of Human Rights Lawyers is that the commissioner report to Parliament, not to the government.

Mr. Kormos: The problem is that the Attorney General is not going to sit down and read any of these sub-

missions. The Attorney General is neither going to read them in the forms that they've been tabled with the committee nor read them in the Hansard. He's got staff—they were all over here a little while ago—who are going to read them, the policy people.

One of the remarkable things is that there's been more concern about the bill than there has been enthusiasm for the bill. I appreciate that the human rights lawyers as an association endorse it, that the legal aid clinics—because I got mail—support it, but the legal aid clinic we've got down where I come from is hard pressed to handle the demand that's out there. It can't handle it. Women like Mrs. Lefebvre don't get their cases dealt with by the legal clinic. They don't fall under their mandate, because their mandate is so restricted, and it's not out of any ill will; it's because there's no funding.

Ms. Tie: That's right. That's why I said there were three preconditions, one of which is—

Mr. Kormos: Yes. With 2,400 applications a year to the commission, at an average of \$3,000 per case, you're talking about millions of dollars. Do you expect that to come from this government into the system? I'm hopeful.

Ms. Tie: I don't know where you get the figure of \$3,000 a case.

Mr. Kormos: I just picked it out of thin air. Do you know a better one?

Interjections.

Mr. Kormos: Well, have you got a better one? Have you got one, David? Do you have a number? Of course not.

Ms. Tie: All I'm saying is that we appear regularly before the Ontario Rental Housing Tribunal representing—we have clinic coverage across all of Ontario. We perform duty counsel functions as well as regular functions at the tribunal, and I would doubt very much that the cost is \$3,000 a case. And the volume is far greater than 2,400 cases a year.

The Chair: Thank you very much for your presentation.

Mr. Zimmer: Just to let the committee know, I did speak to Mrs. Lefebvre and sorted something out there that we'll work out. Thank you.

The Chair: Thank you, Mr. Zimmer.

The next group is the Native Women's Association of Canada. No? Then we'll go to Mr. Foster.

JOSEPH FOSTER

The Chair: Mr. Joseph Foster. Good afternoon, sir. You can begin whenever you're ready.

Mr. Joseph Foster: Thank you very much. I may be slightly frazzled. It's because I got back last night, fairly late, from El Salvador. I hesitated to come because I had not heard before I left on the 26th that I would have the privilege of being selected, therefore I haven't done the amount of research, review and reflection that I would like to have done. But at the same time, especially after coming back from El Salvador, I felt that it's a privilege but also a responsibility to chat with you briefly. If we

were in Salvador, you would have bodyguards and I would be afraid to address you. If we were in Salvador—in fact, I did not take my dog because I don't think she would have survived it. So while we're not perfect in Canada, we have made major strides. That's one thing I wanted to note.

I may ramble a bit. One thing I did want to note is that as we develop our human rights strategy here in Ontario, the disabilities act, and also at the federal level, I think to some extent the eyes of the world are upon us and we should be able to develop practices, legislation, principles, systems that work that are rational and that, most of all, provide dignity to the persons involved. Unfortunately, we know in Canada that we have not done that historically in terms of aboriginals and even to some extent with our welfare people. So I think the importance of keeping that above all else, if I fail to leave an imprint of anything else, I do want the word "dignity" to remain as something the committee should consider both in terms of the legislation and, more importantly, how it's applied.

1720

What I hope to suggest this afternoon is probably considerably different than what some of the other people have addressed you with, and is more of a matter of principles in terms of this legislation and how it's applied. Then I'll throw it open to questions, if you have some comments, to which I'd be happy to try to add.

To give you a bit of background, since you haven't had a chance to read the document I've written, you'll note when you do get it that some of it is in some strange small font because somebody changed the program without telling me what they'd done. After I write "th," it goes into superscript, super small, so maybe it will put us on a level playing field, because you'll barely be able to read it. I will send it by e-mail to Anne later so that you can hopefully get a better copy.

What I want to do is go over a few basic principles. One that I've already stressed is dignity and the fact that I think, most importantly, no matter how the legislation is written, it should be written in such a way that those who are applying it have enough room to adapt that legislation to the community level and the individual situation. There are a few situations where big fits all or all fits everything, but I think those are the exceptions. If we're going to make it work, I think that any changes made to the legislation have to be made in such a way that those who are applying it can do it in a rational and practical way, and that it's done in a way that people don't get left out.

When I talk about people getting left out, I'm not talking about only the people who may have an issue but also the community that is being affected. I heard a story a while back, and I don't know whether it's true or not, of someone being concerned, for example, that if ramps had to be built into every small public place, such as a church or whatever, they would have to close them up. I don't think this is the intent of the legislation. I can speak as a visually disabled person. If I were in a little community library that was their own endeavour and they

didn't have all the fancy equipment, I personally wouldn't expect that community to provide that equipment unless there were help from the province or some other source to assist them. What I'm hoping and praying is that the legislation and the mechanisms and policies that are set up work to the benefit of everyone.

One of the basic principles should be that it must be a win-win situation for the issue and for all those involved. It shouldn't be a matter of complaints solely; it should be a matter that those who have ideas can come to whoever is the body and say, "Look, this would make it better for our community and to be able to assist those who have, in some way or other, a problem in terms of human rights." This is one of the very basic principles.

Just to give you a bit of background, I haven't always been blind. I have about 1% vision. I can see a light here and there. So I come at it slightly differently. I've been on the other side, looking at disabled people. I can't see them any more. I'm one of them. But it's not all bad, because it gives me a much more holistic perspective on how to be on one side and be on the other side and realize that there is a considerable gap of understanding and empathy—whatever it is. I guess what I'm saying is, there has to be an element of compassion that's applied when legislation is written and applied.

I think, just very quickly, in terms of the VIA Rail decision, which I believe is still in front of the Supreme Court and where, to me, it's a matter of rights over economics. I'm hoping that justice, in terms of real social justice, will prevail in that case. I think that's very important in the way the legislation is drafted and applied. As I said, I give an example where one doesn't expect undue financial burden, but I think in many cases that can be an excuse. On the other hand, it shouldn't be unreasonable.

Coming back from Latin America, I certainly realize that democracy is a privilege. We take it as a right, but it's also a privilege. It's also very fragile, and therefore it's a responsibility. But the one thing I've noticed working with disabled people is that everyone, and that includes every disabled person that I have contacted because of my present work, says, "Yes, we want the benefits, we want to participate, but we also want to contribute." I think that if the legislation is written properly and if the government supports it properly, then it will not be so much a matter of costs; it will be investments, and in many cases those investments will not only be in terms of social justice and dignity and the advancement of Ontario society, but will actually generate economic benefits. So we can look at it sometimes too narrowly, and I think this certainly was the VIA Rail case.

I would prefer to stop there for the moment and leave it open to some questions, if I may.

The Chair: We have a little over three minutes for each side, beginning with the official opposition.

Mr. Runciman: Thank you, sir, for being here today. I very much appreciate it, and I have to say I really like your approach with respect to setting out, as you see

them, the principles that should apply to the application of human rights legislation in the province.

When this legislation was tabled, I cited a case which I think falls into the area that you've referenced here. It was a situation that upset me, as someone who has been a part-time resident of Toronto for over 25 years. The human rights organization in Ontario made a decision that the Uptown Theatre had to install elevators. This was a historic old theatre in downtown Toronto, and it was one of those situations where the economics just didn't make sense. The theatre closed its doors and has been torn down. The commissioner at the time, Mr. Norton, expressed some, I think, very sincere regret.

I think those are the situations that you're talking about, that if there's going to be a decision made, there should be some rationality brought to it and there should perhaps be some assistance. If an arm of government is going to make a decision like that, which I think was damaging in a bigger sense, in terms of the people who may have been suffering from a lack of access versus the broader public good and the history behind that particular facility, there should be a willing role of government to assist in meeting that requirement and not simply making it a requirement which, in this situation, obligated the business to close down. I'm not sure how often that sort of situation crops up.

I don't really have any questions. I think what you have suggested here makes eminent good sense. It's the sort of thing that in some way, shape or form the committee, at the end of the day, should be endorsing, something along these lines, in terms of whatever comes out of the legislative process. At the end of the day, I think this is the kind of mandate or *raison d'être* for the committee and the human rights organizations in this province in terms of how they proceed in the future.

Well said, and I very much appreciate your input.

1730

Mr. Foster: Just to respond to that, I get rather incensed when I hear the concept of a Canadian disabilities act for the disabled—because I don't think it's for the disabled; it's for Canadians—that same mentality of paternalism that doesn't work for anybody. I've worked as a CIDA person for many years, and we started out by doing development for them—no, worse than that, we started out doing it to them. Then we got a little bit enlightened. We did it for them, we're moving towards doing it with them, and hopefully we're moving towards them doing it with our assistance. I would like to think that eventually we can move in that same sort of progression here, and that certainly applies to human rights.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: I think everybody here agrees with what you have to say. That's the problem with rights. That's why they're called rights. It goes from the very title that you can't pick and choose, you can't weigh rights versus cost. Rights are inherently rights. We have a charter now that has generated concern about everybody having rights, but you can't pick and choose. You can't say that tomorrow is a better time for enforcing rights as

compared to today. If you don't have that perspective, then you don't have rights, do you, Mr. Runciman?

Mr. Foster: In response to that again—I've covered that, you'll notice, in the notes—I think that there's a tendency, especially being Canadian, for us to try to find the perfect solution, and therefore we never quite make it, we never quite implement it. We try sometimes to make too large a jump, to change too quickly. Canadians, particularly, don't like change; for example, I don't think we're as adventuresome as Americans are. So we need to make changes slowly—look at them, modify them, educate people about them—and get on with it, and then you can move more quickly once you know you're going down the right path. Otherwise, you can get enormous delays. Again, the point that I make in the paper is that rules are great, but you can find a good lawyer—sorry, gentlemen and ladies—that can find a way to delay it, get around it, and we've seen that happen, whereas if we follow principles, it's much harder to get around those principles. When you have to look somebody in the eye and say, "I don't agree with that principle," it's much harder to justify, either as a legislator or as a politician.

Mr. Kormos: You're right, Mr. Foster. You can find good lawyers, but you've got to be able to afford them too.

The Chair: Mrs. Van Bommel.

Mrs. Van Bommel: Thank you, Mr. Foster. Especially as we near the end of the day, it's good to be reminded that we are lucky to live in Canada, that we do live in a democratic country that gives us the foundation to make the kinds of reforms that we want to make. You're right: We try for perfection a little bit too much sometimes, and when we miss the target in our efforts, we tend to almost walk away from it. But justice is possible here; there is opportunity for that.

I think sometimes in a democratic society our biggest obstacle and our biggest barrier is attitude, and that's the most difficult to change too. I'd like to hear your comments about the whole issue of attitude as a barrier.

Mr. Foster: Thank you.

The Chair: Thank you, Mr. Foster.

Mr. Foster: Thank you very much. It's been a privilege.

NATIVE WOMEN'S ASSOCIATION OF CANADA

The Chair: Our last presenter is the Native Women's Association of Canada. Welcome and good afternoon. If you can state your names for the record, please. You may begin.

Ms. Lisa Abbott: My name is Lisa Abbott. I'm here on behalf of Sherry Lewis, our executive director. I work for the Native Women's Association of Canada. I'm joined by—

Ms. Neegann Aaswaakshin: Neegann Aaswaakshin.

Ms. Abbott: I'd like to start off by thanking this committee for giving the Native Women's Association the opportunity to come and make a presentation on some of

the concerns that we have with Bill 107 and perhaps pose recommendations for how we feel the bill could be strengthened. You'll have to excuse me because I just got told about an hour ago that I was presenting.

I passed out our written submission. The Native Women's Association of Canada was founded in 1974, so we've been around for over 30 years. We're an aggregate of 13 provincial native women's associations across Canada. Over the past 30 years, the equality interests of aboriginal women and First Nations women in this country—the Native Women's Association, as one of the few national aboriginal women's associations, has been really essential in bringing the equality interests of women to the international arena. We have NGO status, so we make a lot of submissions in the international arena. The Native Women's Association, as the umbrella association, does a lot more in the federal and international arenas, as opposed to our sister organization, which we've jointly made the submission with, the Ontario Native Women's Association, which does a lot more regional and provincial advocacy.

One of the goals of NWAC is to empower aboriginal women by engaging in these kinds of advocacy measures aimed at legislative and policy reforms that promote equal opportunity for aboriginal women, such as access to programs and services. As well, we are committed to ensuring that the unique needs of aboriginal women are reflected in any and all legislative and policy directives that have the potential to have a significant impact on aboriginal women.

We feel that the proposed amendments to Bill 107 will have a significant impact on members of disadvantaged and marginalized populations in their ability to access human rights mechanisms.

The Chair: Can I just interrupt? Could you slow down a bit for the sign language—

Ms. Abbott: Sorry. I talk too fast all the time.

The Chair: Thank you.

Ms. Abbott: Thanks. It's nervousness, actually.

While we see that there is a significant need for reforms because the current system has existed for 40 years relatively unchanged, the face of Ontario is changing. For aboriginal peoples, 75% of our population lives off reserve in urban centres. Aboriginal peoples generally have low socio-economic—they're disadvantaged in the Canadian population. But aboriginal women, by statistics, are even further marginalized. Some of the ways that Bill 107 can be strengthened are by accessibility, defined jurisdiction, adequate power for the Human Rights Commission, operational efficiency and effectiveness, and independence and accountability.

While we feel that there could be more significant, substantive law changes, such as aligning the Ontario Human Rights Code with some of the UN conventions to which Canada is a signatory, such as the social, political, cultural and economic rights as recognized under these very important conventions, we feel the provinces have a very significant role to play in ensuring that Canada meets these important international obligations. So while

we feel that the Human Rights Code can be amended to recognize these important social, political and economic rights, we focused our submission mainly on the impacts of Bill 107 and the shifting of the powers from the Human Rights Commission to a tribunal process, which has been loosely called direct access.

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We do not feel that the direct access model under Bill 107 will mean that aboriginal women will have more access to bringing their claims before the Human Rights Tribunal. We feel that they will have less access, actually. First and foremost NWAC, as a standard, always asks itself whether or not an aboriginal woman with very limited education, perhaps a single parent, with limited financial resources, would be able, and feel comfortable, to bring her claim forward. So we asked ourselves this, whether or not an aboriginal woman in that circumstance could bring her claim before a newly revised process, the process that Bill 107 is attempting to amend. We feel that shifting the jurisdiction and power and giving individuals access to a Human Rights Tribunal will make the system more adjudicative, as opposed to supportive.

As an organization, NWAC has used, with limited resources—we have very limited resources as a national organization and we've relied on the Canadian Human Rights Commission and have worked with them in two areas. In 2001, with the Canadian Elizabeth Fry Society, we jointly launched a human rights complaint for women who were federally sentenced. We feel that the commissions play a really important and vital role in looking at systemic discrimination and taking claims, supporting individuals and looking at the systemic nature of discrimination against marginalized populations. We feel that this is a very important, vital role and we're hoping that Bill 107 does not strip that role and that function from the commission because it plays a really vital role in monitoring human rights and taking claims on behalf of the public interest. That's our main recommendation. I guess I'll stop there because I'm just rambling.

The Chair: Thank you. We'll start with Mr. Kormos.

Mr. Kormos: You made reference to making a complaint on behalf of women prisoners, women in federal prisons. Do you call upon your people to use the respective commissions to make complaints when they encounter discrimination, racism, sexism, what have you?

Ms. Abbott: All the time. The Native Women's Association actually fields many calls from women right across Canada, and usually that's what we do. A lot of times women contact our office as aboriginal women because they think we have the resources to launch these kinds of claims, either charter claims or human rights claims. So we usually direct them to the Canadian Human Rights Commission because of its access, because you don't need a lawyer to go through that process and you'll be guided through the process by the commission.

Our organization itself, because we deal more in the federal jurisdiction—the Canadian Human Rights Act has a section called section 67. It's the last section in the

Canadian Human Rights Act and it exempts the Indian Act and actions pursuant to the Indian Act from human rights claims. So we have a lot of women in the public sector, off reserve, who call our office for claims against provincial governments or in the workplace and these sorts of things, but we also have another group of women who call our office for discrimination claims against their bands. But the Canadian Human Rights Commission and the Canadian Human Rights Tribunal don't have the jurisdiction, because of section 67, to look into those kinds of claims.

Women call our office, I would say, on average—Neegann, what do you think?

Ms. Aaswaakshin: Probably about 10 times a month we have different complaints from aboriginal women on First Nations and in urban areas. We don't have the capacity to facilitate and advocate for each one of these aboriginal women, nor do local aboriginal women's organizations. We're understaffed and we just don't have the resources or the capacity to help women with these claims, and there are a lot.

Mr. Kormos: What's the timeliness? I appreciate that you're talking about the Canadian Human Rights Commission, but it's a commission body with a tribunal at the tail end, very similar to Ontario. What's the time frame that they resolve matters in, in your experience?

Ms. Abbott: Originally, when we had launched the joint claim with the Canadian Elizabeth Fry Society, we were going to put the claim in on behalf of six women in prison. The Canadian Human Rights Commission wanted to—well, we decided with the Canadian Human Rights Commission that it might be more advantageous if we looked at more of the systemic barriers because of the high overrepresentation of aboriginal women in the prisons and also, once they arrive in prison, the system of discrimination that occurs even within the prison. We decided to launch more of a systemic investigation, so we were happy with that.

In 2001, we filed the claim and did submissions. By December 2003, the commission had issued its report. So it was two years for that claim process.

Mr. Kormos: Thank you kindly. Please tell your executive director that this committee indicates very clearly that you represented her extremely well. You did.

Ms. Abbott: I was nervous as heck. Thanks.

Mrs. Van Bommel: Thank you for your presentation. As I'm going very quickly through your brief to us, I certainly note your second recommendation, which points out that there's a need for access to service in rural areas. As an MPP for a rural area, this is the first time I've seen this in any of the documentation that's been brought before us, and I certainly appreciate you bringing that to our attention. It's very important in terms of access.

I want to carry the question that Mr. Kormos brought forward one step further. In the last few days, we have heard from a number of women's groups who have told us that they found the whole system intimidating and very long in the Ontario Human Rights Commission and

tribunal system. I'm wondering, what is the experience of aboriginal women in the Ontario system?

Ms. Abbott: Because of the intimidation and these sorts of things, I think that aboriginal women are one of the underserved populations. I think it has to do with a lot of things. A lot of people are under the impression—maybe they really don't know their rights, first of all. The Canadian Human Rights Act was passed in 1977, the section 67 that I was referring to, and a lot of aboriginal people don't think they can actually have access to a Canadian Human Rights Commission or a process such as that. So a lot of times, when women call our office asking us to help them or advocate for them in certain areas, we have to tell them what their rights are, where they can go, where they can access services, those sorts of things. So those issues of access are compounded for aboriginal women because of intimidation and a whole history of being excluded from these kinds of processes.

Mrs. Elliott: I'd also like to add my voice to thank you for your excellent presentation. I have gone ahead and read very quickly through your submission, and it seems that, unlike what's recommended in the legislation, which is to reduce the investigative powers of the commission, you're really recommending that they be enhanced. So is it fair to say that we're sort of going in the wrong direction with this legislation, with respect to the commission?

Ms. Abbott: Yes. I think the commission does play a really vital role in supporting individuals and also in taking on these kinds of systemic issues. I think that part of the problem with the timeliness and those sorts of things is the fact that it has been under-resourced and underfunded for so long. That's what created the backlog. I believe that an independent commission does have a significant role and function to play in Canadian society and in the province of Ontario.

Mrs. Elliott: Perhaps I could just ask you one other question, because I also see that you recommend the principle of choice: either proceeding directly to the tribunal or having complaints investigated by the commission. In your experience with aboriginal women, how

often do you think that your clients would choose to go directly to the tribunal?

Ms. Abbott: I think it's a really complex issue. Some claims and some claimants who have the resources to proceed directly to tribunal probably could benefit from that system, but for others who may need more support or whose claims are more systemic in nature, a commission-style investigation and following it through the process that way probably would be more beneficial for the individual and for the larger society.

Mrs. Elliott: Thank you very much. I appreciate that.

The Chair: I missed Mr. Zimmer. Would you like to make a comment?

Mr. Zimmer: Are you presenting on behalf of the Native Women's Association of Canada or the Ontario Native Women's Association?

Ms. Abbott: The Native Women's Association of Canada. ONWA will probably be presenting tomorrow in Thunder Bay.

Mr. Zimmer: What are your particular responsibilities at the association?

Ms. Abbott: Last year I articulated with them, and I stayed on this year as a policy analyst.

Mr. Zimmer: Are you a lawyer by training?

Ms. Abbott: Yes, and even this is intimidating, just so you know.

Mr. Zimmer: Thank you very much.

Mr. Kormos: Chair, if I may, just briefly, it's been a long day here in Ottawa, and I will be bold enough to speak for all of us on the committee in thanking the Legislative Assembly staff who have borne with us, some of whom will continue to stay here and work as they unload this stuff from the room and load it back up. I just want to say we're grateful for their high level of tolerance for elected members.

The Chair: Thanks to the staff, all the committee members, the presenters and, again, the sign language staff.

This committee is adjourned until tomorrow morning in Thunder Bay at 10 a.m.

The committee adjourned at 1751.

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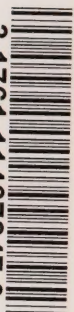
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